TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908

No. 148.

MIGUEL TUPIÑO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED JULY 24, 1908.

(20,814.)

(20,814.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 411.

MIGUEL TUPIÑO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print.
Caption	*a*	1
Bill of exceptions	1	1
Statement of proceedings	1	1
Specification of necessary parts of record	5	3
Certificates to bill of exceptions	8	5
Complaint	10	6
Amended complaint	12	7
Answer	24	13
Proceedings on trial	26	14
Testimony of Miguel Macias y Toro	27	14
Manuel Nieto	43	22
Exhibit No. 1—Deed to Faustino, &c	48	25
No. 2—Deed to Garcia, &c	54	28
No. 3—Deed to Hernandez, &c	58	30
No. 4—Deed to Patino, &c	62	33
No. 5—Deed to Santos, &c	67	35
No. 6—Deed to V. Biscarra, &c	72	38
No. 7—Deed to L. Biscarra, &c	77	40
No. 8—Deed of Clavet, executor, &c	82	43
No. 9—Amplification of above deed	100	52
No. 11—Certificate of forestry bureau	123	63
No. 12—Certificate of provincial treasurer	124	64
No. 13—Contract of February 29, 1896	124	64

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 9, 1908.

	Original.	Print.
Testimony of Gregorio Soriano	130	66
Ignacio Flores	134	69
Lucas Mendoza	138	71
Engracia Maraggun	140	72
Fernanda Corciano	142	74
Nicolas Lacaste	145	75
Justo Allam	148	78
Ignacio Malana	151	79
Teodoro Balusan	152	80
Teodoro Vidal	153	81
Dionicio Respicio	154	82
Domingo Baccay	156	83
Arcadio Tubera	158	84
Agustin Dorone	159	85
Zacarias de la Cruz	159	85
Manuel Dalaudao	161	86
Bruno Dalaudao	165	89
Document A—Copy of a possessory information of Victor Guzman	166	90
B—Transcript of registry of property	179	98
C—Transcript of registry of property	182	100
Plaintiff's brief	186	102
Defendants' brief	211	114
Decision	221	120
Application for writ of execution	233	127
Affidavit of Miguel Macias y Toro	234	128
Affidavit of Louis de la Vega *et al*	235	128
Hearing on the motion for execution	236	129
Decision on the motion for execution	237	129
Affidavit of Francisco Balbas y Alvarez	239	131
Affidavit of Miguel Macias y Toro	240	132
Motion for new trial	242	132
Decision on motion for new trial	245	134
Exceptions to decision on motion for new trial	247	135
Letter of clerk of court of first instance transmitting bill of exceptions	248	136
Certificate of clerk of court of first instance	249	136
Application for addition to bill of exceptions	249	137
Certificates of treasurer of province of Isabela	254	139
Articles from by-laws of complainant	257	141
Testimony of Jose Poo	264	144
Manuel Rodriguez	269	147
Baldomero Guillen	273	149
Enrique Taviel de Andrade	277	152
Luis de la Vega	280	154
Mariano Claravall	282	155
Decision of Judge Blount, May 2, 1902	285	157
Affidavit of Gregorio Soriano	288	158
Manuel Nieto Noriega	289	159
Francisco Balbas y Alvarez	290	159
Hearing on motion	292	161
Decision on motion for new trial	294	161

	Original.	Print.
Testimony of Nicolas Lacaste	296	162
Dionicio Respicio	299	164
Minutes of session of supreme court, March 30, 1903	301	165
Motion to rule out papers from bill of exceptions	301	165
Decision on motion to rule out papers from bill of exceptions	301	165
Notice of motion for time to present brief	303	167
Notice of motion to vacate appeal	304	167
Affidavit of Francisco Dominguez Velazquez	304	167
Minutes of session of supreme court, August 10, 1903	305	168
Motion to vacate appeal denied and time granted to file brief	305	168
Motion of appellee as to notice	305	168
Order as to notice	307	169
Motion to annex map to record	307	169
Map	307½	169
Motion to increase bond argued and submitted	308	170
Opposition to motion to make map part of record	308	170
Argument and submission	311	172
Decision	312	172
Concurring opinion of Johnson, J	315	174
Dissenting opinion of McDonough, J	355	193
Dissenting opinion of Cooper, J	364	197
Application for rehearing	365	198
Letter of Henry C. Ide, secretary of finance and justice, to Justice Torres, August 31, 1904	369	200
Telegram of Provincial Governor Curry, August 30, 1904	370	200
Order to put decree into effect, &c	370	201
Order denying petition for rehearing	371	201
Motion to send down remittitur, &c	371	202
Order to send down remittitur, &c	374	203
Judgment	375	204
Motion for stay pending appeal, &c	376	204
Exceptions to decision	378	205
Order denying appeal, &c	379	206
Affidavit of I. Muntadas	381	206
Jose Traviesas	381	207
Aurelio Medel	382	207
Carlos Heras	383	208
Dionicio Cuntapay	384	209
Nicolas Lacaste	385	210
Teodulfo Flor-Mata	387	211
R. S. McDougall	389	212
Certificate of acting supervisor treasurer of Isabela	390	213
Contract of rental	391	213
Petition for appeal, &c	395	215
Order granting appeal, &c	396	216
Exception of plaintiff	397	216
Notice of motion to extend time	398	217
Notice of motion to execute judgment	399	217
Affidavit of Thomas D. Aitken	400	218
Order to execute judgment	401	218
Order denying motion as to bond	402	219
Motion for reargument	403	219

	Original.	Print.
Order denying reargument	404	220
Letter of clerk transmitting decision	405	220
Assignment of errors	406	220
Citation on appeal	410	222
Order denying petition for writ of error	411	223
Assignment of errors	412	223
Bond on writ of error	415	225
Petition for writ of error	416	226
Writ of error	422	229
Assignment of errors	423	230
Citation and service	426	231
Clerk's certificate	427	232

a UNITED STATES OF AMERICA:

Supreme Court of the Philippines.

MIGUEL TUPIÑO ET AL., Plaintiffs in Error,
vs.
LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, a Corporation (Sociedad Anonima), Represented by MIGUEL MACIAS Y TORO, Respondent.

English Translation of Bill of Exceptions with Index.

1 UNITED STATES OF AMERICA:

Supreme Court of the Philippines.

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vs.
LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, a Corporation (Sociedad Anonima), Represented by MIGUEL MACIAS Y TORO, Respondent.

Bill of Exceptions.

Be it remembered that at the December term, 1902, of the Court of First Instance of Isabela Province, first judicial district, his Honor Isidro Paredes, Judge of the Court of First Instance for the second judicial district, presiding, there came on to be tried the case of La Compañia General de Tabacos de Filipinas, Sociedad anonima, represented by Don Miguel Macias y Toro, plaintiff, against Miguel Tupiño *et al.*, defendants, the same being an action of ejectment.

The cause, being regularly called, the trial of the same was begun before the Court, on the 11th day of December, terminating on the 24th day of December, 1902.

When Miguel Macias y Toro, the first witness for plaintiff, was called and sworn, it was here admitted that plaintiff would prove title to the lands comprehended within the "Hacienda de San Luis y la Concepcion" "by the titles which he exhibits in the act before this Court," the plaintiff offered and read in evidence seven
2 deeds marked "Exhibits Nos. 1 to 7" inclusive, dated October 20, 1882, respectively, from the Intendencia General de Hacienda de estas to Doroteo Faustino, Santiago Garcia, Potenciano Hernandez, Marcos Patiño, Potenciano de los Santos, Valentin Vizcarra and Ludocico Viscarra respectively; the defendants objected to the introduction of the said deeds on the ground that they were invalid as appeared upon their face in that they had not been recorded in said province and that the parties whose names appeared therein had not been placed in possession of the lands described in said documents according to the clause on the face of

same which specially enjoined the compliance with and fulfillment of said requisites as conditions precedent to the vesting of the estates, and that a failure to so comply with same would operate to render the said documents null and void as stated in said clause appearing upon their face; which objection the court overruled, to which said ruling said defendants excepted and now assign the same as error.

The plaintiff also offered and read in evidence a deed marked "Exhibit No. 8" dated October 31, 1887, from Juan Clavet, executor of the estate of one Antonio Pascual Casal to the Compañia General de Tabocas de Filipinas, for 2902 hectareas, 61 areas and 78 centiareas, not including the premises in suit which are described in said deed as forming the boundaries to the North and North-west of the "Hacienda de San Luis y La Concepcion." Also a document denominated an "Escritura de Ampliacion" marked "Exhibit No. 9" dated Nov. 21, 1887, referring to the same property, giving the same boundaries and stating the same number of parcels of
3 land going to make up the "Hacienda de San Luis y la Concepcion" as contained in said "Exhibit No. 8" but calling for 3956 hectareas, 25 areas and 28 centiareas, without the remotest explanation therefor; defendants objected to the admission of the two latter instruments on the grounds that it appeared from the record that they had been defectively recorded on September 17, 1898; that the essential requisites prescribed by the Mortgage Law had not been observed; that the signatures of the recorder as they appeared on the documents and in the record were not the same; that the boundaries expressed in said documents were not the same boundaries as appeared and which were alleged and pleaded in the complaint of the said plaintiff Company; that the recording of the said documents was refused in the registry by the Spanish recorder, Juan Conde, on March 9, 1895, on the ground that they could not be admitted to record because of the "falta de personalidad en la sociedad anonima" of the said plaintiff Company, which defect was held by the recorder to be fatal (Insubsanable). Which said deeds were all admitted and read in evidence against the said objections of the defendants, which objections the court overruled, to which ruling said defendants excepted and now assign the same as error.

The court further ruled at this juncture that it would admit all documents offered in evidence by the said plaintiff Company as well as those that might be offered in the future and cautioned defendants' counsel, R. S. MacDougall, Esq., to refrain from further interruption of witness by taking objections, to which ruling the defendants excepted and now assign the same as error.

The said witness was asked the following question on cross
4 examination by counsel for defendants: "To prove the ownership of the Compañia General de Tabacos de Filipinas to the lands described as terrenos de labor de Joaquin de Guzman and the ranchos of Minanga and Mabantad, do you rely on the title recorded in Vol. I of the municipality of Cauayan, folio 118, finca No. 75, and in the second provisional Vol. of the municipality of Angadanan, folio 8, finca No. 182?"

To this question the attorney for plaintiff objected on the ground that he believed it to be irrelevant as the witness has repeatedly stated that to prove the ownership of the said Company he has presented titles and documents, which objection the court sustained, to which ruling defendants excepted and now assign the same as error.

The plaintiff offered and read in evidence a contract marked "Exhibit No. 13" dated February 29, 1896, alleged to have been entered by one Manuel Nieto y Noriega as chief of the Compañia General de Tabacos de Filipinas and some of the defendants in this action; defendants objected to the admission of the said contract on the ground that it was not alleged or pleaded in complaint of said plaintiff Company and therefore could not be admitted and used to prove a breach of same in this action, which objection the court overruled and admitted the contract in evidence, to which ruling defendants excepted and now assign the same as error.

When Manuel Nieto y Noriega, chief of the Compañia General de Tabacos de Filipinas in the valleys of Cagayan and Isabela, was called and sworn by plaintiff he was asked by counsel for defendants, on cross examination, if he "recognized and could identify 'Exhibit marked No. 8' and if he was acquainted with its contents?"

5 To this question the court itself objected on the ground that public documents speak for themselves and therefore need no further proof, the court ruling that the question would not be allowed, to which ruling defendants excepted and now assign the same as error.

A verdict was rendered in said cause against defendants therein, ordering them to vacate the premises of which they have been in possession for periods ranging in time from two to thirty years, and for the sum of nine thousand pesos damages, and the forfeiture of all the tobacco raised and gathered from last crop by said defendants; to which verdict the defendants duly excepted.

The plaintiff filed a motion asking for an order for the immediate execution of the judgment or in the event that a bill of exceptions was perfected, that the court order defendants to give a bond for forty thousand pesos, to stay execution, which said motion was heard by the Judge aforesaid, who on the 31st day of December 1902 passed an order fixing the *supersedeas* bond at thirty Thousand pesos Mex., to which defendants excepted and now assign the same as error.

During the same term defendants made a motion for a new trial which was heard by the Judge aforesaid, who, on the 31st day of December, 1902, passed an order denying and suppressing said motion, to which said order the said defendants excepted and now assign the same as error.

Defendants specify as material to a clear understanding of the errors complained of, the following parts of the record.

The original petition of plaintiff, together with the amended petition allowed and filed on the 3rd day of December, 1902.

6 The defendants' answer.

The testimony and cross examination of Miguel Macias y Toro, witness for plaintiff.

The testimony and cross examination of Manuel Nieto y Noriega, *id.*

The original documents offered in evidence by plaintiff and admitted, marked "Exhibits Nos. 1 to 13" inclusive.

The testimony and cross examination of witness Gregorio Soriano. (Introduced by plaintiff as rebutting witness)

The testimony and cross examination of Ignacio Flores, witness for plaintiff.

The testimony and cross examination of Lucus Mendoza, witness for defense.

The testimony and cross examination of Engracia Maraggun, witness for defense.

The testimony and cross examination of Fernanda Corciano, witness for defense.

The testimony and cross examination of Nicolas Lacaste, witness for defense.

The testimony and cross examination of Justo Allam, witness for defense.

The testimony and cross examination of Ignacio Malana, witness for defense.

The testimony and cross examination of Teodoro Balusan, witness for defense.

The testimony and cross examination of Teodoro Vidal, witness for defense.

The testimony and cross examination of Dionicio Respicio,
7 witness for defense.

The testimony and cross examination of Domingo Baccay, witness for defense.

The testimony and cross examination of Arcadio Tubera, witness for defense.

The testimony and cross examination of Agustin Dorone, witness for defense.

The testimony and cross examination of Zacarias de la Cruz, witness for defense.

The testimony and cross examination of Captain Manuel Dalauidao, witness for defense.

The testimony and cross examination of Bruno Dalauidao, witness for defense.

The documents offered in evidence by defendants marked "Exhibits A, B and C."

The brief of plaintiff.

The brief of defendants.

The judgment.

The plaintiff's motion for an order that judgment be executed or that if defendants should move for a stay of execution, that a supersedeas bond of forty thousand pesos be demanded; together with the affidavits of Miguel Macias y Toro, F. Balbas, Luis de la Vega and Joaquin Sanchez Mena read in support of said motion.

The brief of argument on the hearing of said motion.

The order issued by said court on the 31st day of December, 1902, disposing of said motion.

The motion for a new trial, together with order denying
8 same, and the exception made in writing.

And now come the said defendants, within thirty days from the adjournment of the court and present this bill of exceptions, and pray that the same may be signed and certified, and that the errors complained of may be reviewed and corrected.

(Here follow the names of the defendants)

Ilagan, Isabela Province, January 7, 1903.

(Judge's Certificate.)

____, ____,
Judge of the Court of First Instance.

Due and legal service of the within Bill of Exceptions acknowledged.

This 7 day of Enero, 1903.

M. MACIAS,
For the Compañia General de Tabacos de Filipinas, Sociedad Anonima.

Clerk's Office, Court of First Instance of Isabela Province.

ILAGAN, ISABELA PROVINCE, P. I.,
7th Day of January, 1903.

I hereby certify that the foregoing is the true original bill of exceptions, filed in this office, in the case of La Compañia de Tabacos de Filipinas, sociedad anonima, represented by Miguel Macias y Toro, *vs.* Miguel Tupiño *et al.* therein referred to.

Witness my signature and the seal of said court hereto affixed, this the day and year last above written.

FRANCISCO TACCAD,
Clerk of the Court of First Instance, Isabela Province.

9 UNITED STATES OF AMERICA,
Philippine Islands:

I, Francisco Taccad, Clerk of the Court of First Instance of Isabela de Luzon, First Judicial District of the Philippines, certify:

That the bill of exceptions presented against the judgment rendered in the action brought at the instance of the Compañia General de Tabacos de Filipinas against Miguel Tupiño and others, for the detention of certain lands, and attached to the record of the said case appears the certificate of the Honorable Isidro Paredes, which is of the following tenor:

"The bill of exceptions is allowed, and the Clerk is ordered to attach it to the record, and, in compliance with the provisions of the article 143 of the Code of Civil Procedure, to immediately certify said bill of exceptions, and all documents therein cited as part thereof, together with such other matters as the adverse party may desire to add, and to transmit it to the Supreme Court. Isidro Paredes, Judge of First Instance."

The foregoing is a true and correct copy of its original on file in the bill of exceptions above indicated, and in order that it may appear in the above transcript of the said bill to be sent to the Supreme Court, together with the other documents in the said case, I issue this certificate in Ilagan the 16th day of February, 1903.

FRANCISCO TACCAD, *Clerk.*

10 (Title and Caption.)

The undersigned, in the name and on behalf of the said Company, states:

First. That the Compañia General de Tabacos de Filipinas, represented in this province by the undersigned, is the owner of certain lands situated between the towns of Cauayan and Angadanan, of this province, known as the "Hacienda de San Luis y la Concepcion," bounded on the North by the Rio Grande Cagayan and by the lands of Joaquin Guzman, at the present time possessed by his widow, who has contracted a second marriage with Nicolas Lacaste; on the east by the Cornayan Estero and by public lands; on the south by public lands and by the Rio Grande de Cagayan; and on the Northeast by public lands and the ranchos of Mabantad, Carabatan, and Andarayan; having a superficial area of three thousand nine hundred and fifty six hectareas, twenty five areas, and twenty eight centiareas; which said estate is duly recorded in the public register of this province, and was purchased by the said Compañia General de Tabacos for eighty thousand pesos from Antonio P. Casal, through the latter's executor. The said Casal purchased it from its original owners, who acquired it by purchase from the estate in 1882 in small parcels, which, having been concentrated in the hands of a single owner, the said Compañia General de Tabacos, now constitute the said Hacienda, known as the "Hacienda de San Luis y la Concepcion."

Second. That the said Compañia General de Tabacos, since the year 1883, when it purchased the property, down to the
11 present day, has been in possession thereof, quietly, peaceably and continuously, as owner, with the sole exception expressed in the following paragraph:

Third. That the defendants above named have for the last five years, approximately, been illegally holding various portions of the said estate, which together amount to some hundred hectareas, more or less, distributed among as many distinct and separate parcels, but all included within the perimeter of the said estate.

Fourth. That the plaintiff has suffered damages in the sum of nine thousand three hundred pesos, Mexican currency, by reason of the unlawful detention of the said portion of the estate by the defendants above named.

Fifth. That the attempts of the representatives of the Company to induce the defendants to vacate the land they occupy without suit has been unsuccessful.

Sixth. Therefore the plaintiff pravs for judgment in favor of the Compañia General de Tabacos de Filipinas, for the said portions

of the estate in question, and that it be directed that the proper officer restore the said Company, and, in its representation, the undersigned, to the possession of the said estate, after an eviction or expulsion from the same of all the defendants, and that judgment be also rendered against the latter in the sum of nine thousand three hundred Mexican Pesos, and that it be adjudged that the defendants pay the costs of the suit.

Hagan, October 20, 1902.

The Representative of the Company, M. MACIAS.

12 (Title and Caption.)

The plaintiff, Miguel Macias y Toro, in compliance with the order of the Court, amends the complaint of October 20th last and states:

First. That he is a Spaniard and a resident of Ilagan, Province of Isabela de Luzon, of age, married, and chief of the Tabacalera establishment in the said province, and that he appears in the name and on behalf of the said Compañia General de Tabacos de Filipinas, by order of José Rosales y Bustillos, agent or attorney-in-fact of Clemente Miralles de Imperial y Jimenez de Frontin, Director of the said Company, as appears from the power of attorney numbered 369, a transcript of which appears in the record, the same having been executed before the notary public Enrique Barrera y Caldes in Manila the 7th day of June last by the said Jose Rosalez.

Second. That the said Compañia General de Tabacos de Filipinas, a corporation domiciled in Barcelona with a representative in the Philippines, was created on the 26th day of November, 1881, and is governed by the Spanish mercantile laws and by its own by-laws and regulations, some of the articles of which have been transcribed and appear of record, the said Company having been recognized by the Treaty of Paris and by the American authorities, and that it has been operating in these Islands without interruption up
13 to the present time, and has perfect legal capacity to exercise civil and criminal action, and also to contract obligations and acquire rights, in accordance with Article 116 of the Code of Commerce and Articles 35, Section 2, and 38 of the Civil Code.

Third. That the said Company is the owner of some lands situated in the towns of Cauayan and Angadanan, of this province, known as the "Hacienda de San Luis y la Concepcion," bounded on the north by the Rio Grande de Cagayan and by the lands of Victor Guzman, at the present time possessed by the latter's widow, who has contracted a second marriage with Nicolas Lacaste; on the east by the Cornayan Estero and by the public lands; on the south by public lands and by the Rio Grande de Cagayan; on the northwest by public lands and by part of the ranchos of Mabantad, Carabatan and Andarayan; and on the west, for its whole length, by the Rio Grande de Cagayan; having a superficial area of three thousand nine hundred and fifty six hectareas, twenty five areas, and twenty eight centiareas; which said estate is duly recorded in the public register of this province, and was purchased by the said Compañia General de Tabacos for eighty thousand pesos from

Antonio P. Casal, through the latter's executor. The said Casal purchased it from its original owners, who acquired it by purchase from the State in 1882 in small parcels, which, having been concentrated in the hands of a single owner, the Compañia General de Tabacos, now constitute the said hacienda, known as the "Hacienda de San Luis y la Concepcion."

14 Fourth. That the said Compañia General de Tabacos de Filipinas has, from the year 1883, the time of the purchase of the land, to the present day, been in quiet, peaceable and continuous possession thereof, under claim of ownership, with the sole exception mentioned in the following paragraph.

Fifth. That the defendant above named, for more than one and less than six years ago, illegally seized and continued to hold certain portions of the said property of the Compañia General de Tabacos de Filipinas, which said portions, together, have a superficial area of four hundred and forty six hectareas, seventy nine areas and four centiareas as to the fields, and four hectareas, approximately, as to the lots on which their houses and warehouses are built, distributed among distinct and separate parcels, but all within the perimeter of the said estate above described, and for a better understanding thereof, the following statement is given of the parcels held by each one of the defendants:

Dionisio Respicio holds a lot of six areas, approximately, on which he has erected a house and warehouse, with two parcels of arrable land, one of which has an area of nine hectareas and the other of one hectarea;

Juan Fernando has a lot of five areas, approximately, on which he has built a house and warehouse. He helps Dionisio Respicio in his planting, and does not himself possess any fields or arrable land;

Doroteo Mabajja, alias Mabassa, holds a lot of four areas, approximately, with a house thereon, and a field of two hect-

15 areas;

Gabriel Cuntapay has a -ot of approximately five areas, with a house and warehouse thereon, and a field of forty areas;

Pascual Tagagin has a lot of four areas, approximately, with a house thereon, and a field of four hectareas and fifty areas;

Zacarias de la Cruz has a lot of five areas, with a house and warehouse erected thereon, and two fields, of which one contains three hectareas and the other fifty areas;

Platon de la Cruz has a lot of four areas, on which is a house, but holds no fields, he aiding his father Zacarias in his planting;

Agustin Dorone has a lot of five areas with a house and a warehouse thereon, and a field of seven hectareas and twenty areas;

Emeterio Respicio holds a lot of four areas, on which is a house, and two fields, one of which contains two hectareas and ten areas and the other one hectarea:

Carlos Calimag has a lot of approximately seven areas, on which stand two dwellings and a warehouse, and two fields containing eight hectareas and ten areas;

Fabian Careaga has a lot containing five areas, on which stand a dwelling and a warehouse, and a field of approximately thirty hectareas;

Urbano Aleriano holds a lot of four areas, with a house
16 thereon, but has no field, he aiding Fabian Careaga in his planting;

Teofilo Aleriano has a lot of four areas, on which stands a house, and a field of one hectarea and thirty five areas;

Vicente Santiago has a field of two hectareas;

Potenciano Lucas holds a lot of four areas, with a house thereon, and a field of six hectareas;

Maximino Galabay has a lot containing four areas, with a house thereon, and a field of fifty areas;

Regino Ramones occupies a lot of five areas, on which stands a dwelling and warehouse, and a field containing three hectareas;

Honorio Crisologo holds a lot containing four areas, with a dwelling thereon, and a field of one hectarea and fifty areas.

Moises Aguinaldo has a lot of five areas, with a dwelling and a warehouse standing thereon, and a field of three hectareas;

Bartolome Guitang holds a lot containing four areas and a field containing four hectareas and twenty six areas;

Eduardo Domingo occupies a lot of five areas, with a house thereon, and a field of twelve hectareas and ninety two areas;

Gabino Domingo holds a lot of five areas in extent, on which stand a dwelling and warehouse, and a field of four hectareas,
17 forty eight areas and twenty five centiareas;

Francisco Bautista occupies a lot of four areas, on which is a house, and a field containing five hectareas and fifty areas;

Nicolas Lucas holds a lot of four areas, with a house thereon, and two fields, of which one contains nine areas and the other two hectareas;

Mariano Narciso possesses a lot of five areas, with a dwelling, and a warehouse thereon, and a field containing eighteen hectareas;

Apolinario Lucas occupies a lot containing five areas, on which stand a dwelling and a warehouse, and two fields, of which one is one hectarea and sixty eight areas and the other five hectareas, ninety nine areas and sixty four centiareas in extent;

Baldomero Gaspar has a lot containing four areas, on which is a warehouse, and a field of three hectareas and seventy five areas;

Leandro Gaspar holds a lot of five areas, on which stand a dwelling and a warehouse, and two fields containing respectively two hectareas, forty eight areas and eleven centiareas, and one hectarea;

Leon Galabay has a lot containing five areas, with a dwelling and a warehouse thereon, and a field of four hectareas;

Sabas Cristobal holds a lot of five areas, with a house and a warehouse thereon, and a field containing one hectarea;

18 Crispulo Cristobal occupies a lot containing four areas, on which a house stands, and a field containing six hectareas;

Marcelo Cristobal possesses a lot of four areas, with a dwelling

thereon, and two fields containing one hectarea and forty four areas and seventy areas, respectively;

Felix Ricardo holds a lot containing four areas, with a house standing thereon, and a field containing forty five areas;

Giburcio Juguib occupies a lot containing five areas, on which a dwelling and a warehouse stand, and a field of six hectareas;

Felix Asio holds a lot of four areas, with a dwelling thereon, and a field fifty areas in extent;

Clemente Batara occupies a lot containing five areas, on which stand two dwellings and a storehouse, and a field containing seven hectareas;

Cesareo Gerardo holds a lot of five areas, with a house and a warehouse thereon, and a field one hectarea and eighty areas in extent;

Melecio Tubias holds a lot of four areas, with a dwelling standing thereon, and a field containing nine hectareas;

Luis Sagabaen holds a lot of four areas, and a field containing two hectareas;

Juan Baliti occupies a lot containing five areas, with a dwelling and a storehouse thereon, and a field containing one hectarea and sixty areas;

19 Silverio Vidal occupies a lot containing five areas, on which a dwelling and warehouse stand, and a field containing one hectarea and eighty areas;

Teofilo Subia holds a lot of four areas, a house standing thereon, and a field containing one hectarea and twenty areas;

Ventura Robles possesses a lot containing five areas, on which a dwelling and storehouse are located, and a field of ten hectareas and eighty areas;

Victor Mendoza occupies a lot containing four areas, with a house thereon, and two fields, one of which contains twelve hectareas and nine areas and the other ninety areas;

Teodoro Vidal has a lot of four areas, on which a house stands, and two fields of which one contains four hectareas twenty seven areas and forty four centiareas, and the other four hectareas and thirty two areas;

Gelasio Valdes occupies a lot of four areas, with a house located thereon, and a field of nine hectareas, sixty-three areas and fifty centiareas;

Eulogio Carnate has a lot of four areas, with a dwelling thereon, and a field of two hectareas, ninety five areas, and eighty centiareas;

Santiago Daguio holds a lot of five areas, with a dwelling and a storehouse thereon, and two fields, one of which contains eleven hectareas and twenty areas, and the other nine hectareas and twenty five areas;

Ramon Barut occupies a lot containing four areas, with a house thereon, and a field of sixty areas;

Santiago Mendoza occupies a lot of five areas in extent,
20 on which two houses have been erected, and three fields, of which the first contains seven hectareas and ninety two

areas; the second one hectarea, seventy two areas and eighty centiareas; and the third twenty six areas and eighty centiareas;

Julio Arce occupies a lot four areas in extent, with a dwelling thereon, and a field eleven hectareas and forty eight areas in extent;

Melecio Gallon possesses a lot covering four areas, with a house located thereon, and a field containing three hectareas, fifty seven areas and twenty five centiareas;

Clemente Baquiran occupies a lot containing five areas, with a dwelling and a warehouse thereon, and two fields containing one hectarea and eighty areas and two hectareas and fifty three areas, respectively;

Urbano Lubo holds a lot five areas in extent; with a dwelling and a warehouse located thereon, and two fields of which the first contains one hectarea, sixty two areas and fifty centiareas, and the second three hectareas and sixty six areas;

Genaro Domingo holds a lot of four areas, with a house thereon, and a field containing one hectarea and ninety eight areas;

Damiano Cacal has a lot four areas in extent, on which a dwelling stands, and two fields, of which one is two hectareas and fifty nine areas in extent and the other six hectareas and ninety eight areas;

21 Pedro Madariaga occupies a lot four areas in extent, on which a house stands, and a field containing three hectareas, thirty nine areas and twenty centiareas;

Miguel Tupiño has a lot of six areas, with a dwelling and two warehouses thereon, and two fields, containing four hectareas and fifty areas and two hectareas and twenty five areas, respectively;

Eulalio Eugenio holds a lot containing four areas, on which a house has been erected, but possesses no fields, he aiding Miguel Tupiño in his planting;

Justo Eugenio occupies a lot four areas in extent, with a house thereon, and a field covering nine hectareas;

Agustin Lafuente occupies a lot containing five areas, with a dwelling and a warehouse erected thereon, and two fields, one of which contains nine hectareas and the other fifty areas;

Juan Labuguen holds a lot containing four areas, with a house thereon, and two fields containing respectively sixteen hectareas, and seventy five areas;

Nicolas Agcanas occupies a lot containing four areas, with a house thereon, and a field containing two hectareas;

Prospero Basilio holds a lot four areas in extent, on which a house stands, and a field sixteen hectareas in extent;

Arcadio Tubias has a lot covering four areas, with a house thereon, and a field containing fifteen hectareas;

22 Emiliano Baccay has a lot covering four areas, on which stands a dwelling, and a field of one hextarea and twenty areas;

Ubaldo Tanguilan occupies a lot containing four areas, on which a house has been built, and a field four hectareas in extent;

Eugenio Guzman holds a lot covering four areas, with a house thereon, and a field containing three hectareas and fifty areas;

Eugenio Apostol occupies a lot containing four areas, on which there is a house, and a field containing four hectareas;

Francisco Ortega holds a lot covering four areas, with a house thereon, and a field covering seventy five areas;

Justo Allam has a lot four areas in extent, on which a house has been built, and a field covering six hectareas;

Vicente Calimag holds a lot containing four areas, with a dwelling thereon, and a field covering one hectarea;

Roman Ramos has a lot covering four areas, with a house thereon, and a field of eight hectareas;

Miguel Medina holds a lot four areas in extent, with a house situated thereon, and a field covering *of* six areas;

Lazaro Almazan has a lot covering four areas, on which a house stands, and a field covering four hectareas;

Matias Valdes occupies a lot containing five areas, with a house located thereon, as well as a warehouse, and a field containing four hectareas and fifty areas;

Ubaldo Batara occupies a lot four areas in extent, on which a house has been erected, and a field covering seventy five areas;

Ventura Respicio occupies a lot containing four areas, with a house located thereon;

Lorenzo Padilla holds a lot containing four areas, on which a house stands, and a field covering seventy eight areas;

Alejandro Calimag holds a lot containing five areas, with a house thereon, as well as a storehouse, and a field containing two hectareas;

Esteban Corpus has a lot covering five areas, with a dwelling and two warehouses erected thereon, and two fields, each of which has an area of eighty seven areas and fifty centiareas;

Esteban Marcos occupied a lot four areas in extent, on which a dwelling and a warehouse stand, and a field covering two hectareas and fifty areas;

Hipolito Ramos occupies a lot containing five areas, on which stand a dwelling and a warehouse, and a field covering an area of approximately two hectareas; and finally,

Luis Guzman holds a lot four hectareas in extent, on which a dwelling and a storehouse have been erected.

Sixth. The plaintiff has been damaged in the sum of nine thousand Mexican Pesos by reason of the unlawful detention above described.

Seventh. That the extra-judicial attempts on the part of the representative of the Company to induce the defendants to vacate the lands in question have been unavailing; and

Eighth. He prays for judgment in favor of the Compañia General de Tabacos de Filipinas for the possession of the said portions of the "Hacienda de San Luis y la Concepcion," which is exclusively its property, and that the proper officers be directed to restore the said Company, through its agent, Miguel Marcias y Toro, to the possession of the various parcels of the said estate above indicated, after

the eviction or expulsion therefrom of all the defendants, including the houses and warehouses which they have erected thereon, and that they be absolutely enjoined from thereafter disturbing the said Compañia General de Tabacos de Filipinas in its possession, and to pay, furthermore, the sum of nine thousand Mexican Pesos to the said Company for damages, and to pay, also the costs of the suit.

Ilagan, December 3, 1902.

VICENTE NEPOMUCENO,
Attorney for the Plaintiff.

(Title and Caption.)

V. Nepomuceno, Attorney for the Plaintiff.
R. S. MacDougall, Attorney for the defendants.

The defendant Miguel Tupiño answers the complaint and
25 denies:

1. That the so-called "Hacienda de San Luis y la Concepcion" of which the plaintiff Company alleges itself to be the owner, is bounded on the north at any point by the Cagayan river, or by the lands of Victor Guzman, now the property of his widow, at the present time the wife of Nicolas Lacaste.

2. Denies that the so-called "Hacienda de San Luis y la Conception" is bounded on the north-west only by "part" of the ranchos of Mabantad, Carabatan and Andarayan.

3. Denies that the boundaries of the so-called "Hacienda de San Luis y la Concepcion" on the north and northwest, as described in the complaint, are true and exact boundaries thereof.

4. Denies that the so-called "Hacienda de San Luis y la Concepcion" has a superficial area of three thousand, nine hundred and fifty six hectareas, twenty five areas and twenty eight centiareas.

5. Denies that the said plaintiff Company has a title duly recorded in the property register of the province of Isabela to the portions of the land described in paragraph 5 of the complaint, as possessed by the defendant.

6. Denies that the portions of land described in article 5 of the complaint as held by the defendant from any part of the said "Hacienda de San Luis y la Concepcion" or that they at any time formed part thereof, or that they are situated within the
26 boundaries thereof.

7. Denies that the plaintiff Company is the owner of the portions of land described in paragraph 5 of the complaint as possessed by the defendant, or any part thereof, or that the plaintiff Company at any time occupied or possessed them, in whole or in part, or that it has ever been entitled to the possession thereof, at any time or in any manner.

8. Denies that the plaintiff Company has any interest in the said portions of land described in paragraph 5 of the complaint as possessed by the defendant, or that the Company has had any interest in them at any time.

9. Denies that the said Portions of land described in paragraph 5 of the complaint as possessed by the defendant have been unlawfully withheld from the plaintiff Company by the defendant.

10. Denies that the plaintiff Company has suffered damages by reason of the detention of the said portions of land by the defendant in the sum of nine thousand pesos or in any other sum whatsoever.

Ilagan, December 10, 1902.

R. S. MACDOUGALL,
Attorney for the Defendant.

Proceedings on Trial.

In Ilagan and the Court of first instance of Isabela de Luzon, on the 11th day of December, 1902, before the judge, assisted
27 by me, the Clerk, appeared the parties to the action, on the one hand the plaintiff, represented by the attorney Vicente Nepomuceno, and the other, represented by his attorney Mr. MacDougall.

The trial having commenced, the plaintiff stated that it offered in evidence the testimony of MIGUEL MACIAS, as representative of the Compañia General, who, after being first duly sworn, testified as follows:

Q. Please state your name, age, profession, etc.

A. My name is Miguel Macias y Toro; I am married, of age, a merchant by occupation, and an inhabitant of this capital and represent the Compañia General de Tabacos in this province.

Q. Do you affirm and ratify the contents of the amended complaint in the record?

A. Yes sir, I ratify it in all its parts, and I am ready to prove every one of them.

Q. How do you prove that the Compañia General de Tabacos de Filipinas has possessed and continued possessing, quietly, peaceably and continuously, the lands composing the Hacienda de San Luis y la Concepcion, from the year 1883 down to the present time?

A. I first prove the ownership of the lands included in the Hacienda de San Luis y la Concepcion by the title deeds, which I exhibit to the Court of First Instance at this time, and ask that they be returned to me after they have been compared with the copies attached thereto, and which are exhibited to this court in the month of April in a litigation concerning the lands of the said hacienda.

These documents are as follows: No. 1. Deed of the land to
28 Doroteo Faustino, sold by him to Antonio Pascual Casal on December 5, 1882, recorded in Volume I of the Registry of Cauayan, 11th archive, folio 118, property No. 75. No. 2. Deed in favor of Santiago Garcia and a deed of sale in favor of Antonio Pascual Casal, dated December 12, 1882, recorded in the registry on September 17, 1898. No. 3. Deed in favor of Potenciano Hernandez, and a public instrument showing the purchase of the property by

Antonio Pascual Casal, recorded September 17, 1898. No. 4. Title in favor of Mariano Patiño, and deed of sale to Antonio Pascual Casal, recorded September 17, 1898. No. 5. Title to Potenciano de los Santos, and deed of sale to Antonio Pascual Casal, recorded September 17, 1898. No. 6. Title in favor of Valentin Bizcarra and deed of sale to Antonio Pascual Casal, recorded September 17, 1898. No. 7. Title in favor of Ludovico Bizcarra and deed of sale to Antonio Pascual Casal, recorded September 17, 1898. No. 8. An instrument declaring the ownership of the Hacienda de San Luis y la Concepcion, numbered 436, executed before the notary public Ricardo Saavedra in favor of the Compañia General de Tabacos de Filipinas October 31, 1887. No. 9. An instrument, serial number 456, executed before the notary public Ricardo Saavedra November 21, 1887, as an amplification of the said deeds formerly executed by His Excellency Antonio Pascual Casal, his estate, and the Compañia General de Tabacos de Filipinas, this having been recorded, like the previous documents, on the 17th of September, 1898.

29 At this point the attorney for the defendant stated that he objected to the admission of the documents presented by the plaintiff numbered one to seven, inclusive, in the first place, because of the non-performance of the condition prescribed by the deed of the claim, to wit, the recordation thereof in the Central Administration of Government Monopolies (rentas estancadas); in the second place because the note of inscription which appears in each one of the documents is not made in compliance with article 244 of the Mortgage Law; and finally, because the notes of inscription of these titles were not written in the month of April last, when they were presented before this same Court before His Honor Judge Blount.

Answering the attorney for the defendant, the attorney for the plaintiff asked, for the reasons stated, that the Court overrule the objections. The Judge, in deciding the point, held that he should and would admit all the documents presented by the plaintiff, and such other documents as might thereafter be presented, because the case was open for the taking of testimony and it was necessary to admit all kinds of evidence, more especially as the documents in question were apparently recorded in due form, and that the grounds of the objection would be taken into consideration in the final result.

The parties having been informed of this ruling, the attorney for the defendants asked that his exception be noted.

30 The attorney for the defendants then stated that he also objected to the admission of the documents Nos. 8 and 9, because the Register does not show the essential requisites prescribed by the law, and bacause they do not describe the boundaries of the hacienda clearly, since in the Register itself it appears that the "Haciendas of San Luis y la Concepcion" are bounded on the north and north-west by the arrable lands of Joaquin Guzman and by the ranchos of Mabantad, Carabatan and Andarayan, which are the

lands occupied by and in the possession of the defendants, it thus appearing that they do not form part of the hacienda in question.

The Judge, after hearing the adverse party, stated that the excepting party must abide by the former ruling; that this was not a proper time to examine the legal weight and effect of the documents, but simply to determine whether they should be admitted or not; and finally, that he ruled that they be admitted. The attorney for the defendants excepted to this ruling.

The examination of the witness Macias then continued.

Q. Please continue answering the former question.

A. In addition to the documents of ownership above described, I exhibit a map or plan, numbered 10, which refers to the deed executed in Manila, October 31, 1887, by José Clavet on behalf of the testamentary estate of Antonio Pascual Casal, and also a note which shows that this map was to be attached to the first copy of the said instrument dated in Manila the 16th of November, 1887,
31 signed by the Clerk Ricardo Saavedra. I also exhibit copy of the document showing the record of the haciendas in question in the Forestry Department of the Philippine Islands on April 19, 1901, document numbered 11. I also exhibit another document, numbered 12, which is a certificate showing that the Compañia General de Tabacos de Filipinas has paid the taxes upon the lands comprising the Hacienda de San Luis y la Concepcion. In addition to these documents I offer in evidence proof of the acts of ownership exercised at all times by the Compañia General de Tabacos in the rectification of boundary lines, and the survey of the haciendas in litigation. In 1888 all the boundaries were rectified by the experts Basa and Baldomero Guillen. In 1894 another rectification was effected by Enrique T. de Andrade and Manuel Rodriguez, and in 1901 by the expert surveyor Gregorio Soriano, all of these acts having been effected without opposition on the part of anyone. Furthermore, the Company on various occasions has cut lumber on different parts of the hacienda without opposition on the part of anyone, including the forestry rangers. Furthermore, the ownership of the Company is sealed with the blood of its employees, who were there assassinated. Finally, none of the defendants shows title, with the exception of one Carlos Calimag who has no title, but who paid the land taxes.

Q. What leads you to affirm that the defendants illegally detained and continued to illegally detain each and every one of the parcels in question?

A. Because each and every one of the parcels is comprised
32 within the perimeter of the hacienda, and they all knew that the said parcels really belonged to the Company.

Q. State in what consists the damages fixed in the complaint in the sum of nine thousand pesos.

A. In the annoyance and damage caused to the Compañia General de Tabacos by the detention of these lands and the growth of tobacco thereon, which they refused to deliver to the Company, and because of the peaceful possession of these lands which the Company

should enjoy, whereas at the present time it can not put people on the lands, on account of these disturbances.

Q. Do you remember if the four defendants Augustin Lafuente, Arcadio Tubia, alias Tubera, Eugenio Guzman and Justo Allam have ever expressly recognized the ownership of the Compañia General de Tabacos over the land which they unlawfully detained?

A. I remember that they acknowledged the ownership of the Company, as did other persons, because they signed a compromise with the Company, in the year 1896, before the then representative of the Company, Señor Nieto and in the presence of Señores Enrique T. de Andrade, José Poo, Manuel Rodriquez and Fulgenico Bunuan, by which document they undertook to deliver tobacco on the appraised value, they to be paid the value of the tobacco, and no rent to be collected on account of the ownership of the said lands. I exhibit a document of compromise to which I refer, marked Exhibit No. 13. They ceased to live up to this compromise in 1898, when the revolution broke out, but delivered part of the tobacco, or in part performed this agreement, in 1901.

33 At this point the attorney for the defendants objected to the admission of this document, because it had not been set up in the complaint. In reply the attorney for the plaintiff said that the complaint alleges the ownership by the Compañia General of the lands in question, and one of the acts of ownership exercised is that to which the document refers.

The Judge, considering that the document offered was relevant as proof of the ownership asserted by the plaintiff Company, admitted the same in evidence. Against this ruling the defendant excepted, and asked that his objections to the testimony of the witness as to such matters as he regards irrelevant be recorded, as the Court has warned him not to stop the witness.

Cross-examination:

Q. How many years have you been in the employ of the Compañia General de Tabacos?

A. Fifteen years; ten in la Isabela as Physician for the Company and five in Ilocos.

Q. How many years have you been the head of the Company in this province of Isabela?

A. One year and seven months.

Q. Was the survey, the result of which was the map offered in evidence as Exhibit No. 10, made by order of the Government, or by private enterprise?

A. The map was made by private enterprise.

Q. Then you admit as a fact that the said map offered in
34 evidence and accepted as such is not a map made by Governmental order, or any other competent authority?

A. The plan was made as appears from the note on the foot thereof, signed by the notary public of Manila, Sr. Saavedra, in accordance with the sixty parcels which appear enumerated in the said plan, which also shows the number of persons to whom the said

lands were awarded, as appears from the public instruments which I have exhibited.

Q. Is it not true that the survey which was recorded in the map offered in evidence as exhibit No. 10 was made by the Compañia General without any gubernative or judicial order of intervention?

A. The plans were made by means of notarial acts, as stated in my formar answer.

Q. Was the survey which resulted in the map offered in evidence as Exhibit No. 10 made by order of the Government or not?

A. The plan was made in accordance with what the State sold to the several individuals who appear here, and the superficial area of which lands appear in as many deeds, which were issued by the State.

Q. Was the survey in question the first survey made of the so-called hacienda?

A. I cannot say, because when it was made I was not in the Philippines.

Q. When was the second survey mentioned by the witness made? In what manner and with what formalities?

A. The second survey was made in the year 1888 by the expert surveyor Juan Basa, now deceased, and Baldomero Guillen, who testified to what he knew and did.

Q. Do you or do you not know whether this second survey
35 was made by executive or judicial order?

A. This survey was made by order of the Company for the purpose of determining the boundaries of the said land.

Q. When was the third survey made, and under what conditions under whose orders?

A. I answer the same as before. The survey, or more correctly the rectification of the lines, was made by order of the Company, and it was effected by Messrs. Andrade and Rodriguez, under instructions given by the head manager of the Company, formerly and officer in the Forestry Department, Don Rogelio A. del Olmo, who died in the year 1894.

Q. After this was any other survey made, and if so, for what purpose and by whose order?

A. By my order and for the purpose of rectifying the lines, so that we might organize the same regime existing in the other two estates of the Company, which rectification was effected by the surveyor Sr. Soriano.

Q. In this last survey was the whole estate surveyed, or were certain lands only rectified?

A. The expert surveyor rectified the boundaries of the said estate and was paid for his services, as appears by the receipt which he signed therefore. In making the rectification he separated the part of the hacienda which corresponds to Cauayan and the part which corresponds to Angadanan.

Q. Do you know or not, whether, when Doroteo Faustino bought the parcel mentioned as No. 1 of the lands deeded by the State, said parcel had been surveyed by order of the Govern-
36 ment?

A. I cannot answer that question, because I was not at

that time in the Philippines, but no doubt the survey was made by order of the Government when the parcel was sold.

Q. Have you kept any document with respect to this particular?

A. No, sir, I have no other documents than the titles, and I say the same with respect to the other documents presented to prove the ownership of the Company; that is, that the State must have ordered a survey to be made of these parcels before selling them.

Q. Were you here or in Ilagan during all the month of September, 1898?

A. No sir, I resided in Ilocos.

Q. Who was the head of the Company at that time?

A. Mr. Ponar and the cashier, now in the firm.

Q. Do you know anything concerning the registry of the documents offered in evidence as Exhibits Nos. 1 to 7 inclusive?

A. I know that these documents were recorded in September, 1898, and that when they were presented in the other litigation the attorney for the defendant made this argument for the purpose of retarding the inscription—that it was not valid because it was made when the revolutionary forces occupied all the province, and the attorney for the plaintiff answered that if the inscriptions were not valid it was necessary to acknowledge the esistence of the said Filipino Government, and called the attention of Judge Blount and motioned that he would not get up again, and that was all that was done.

37 Q. Is it not true that in the property register of this province it appears that the said hacienda de San Luis y la Concepcion is bounded on the north by the arrable lands of Joaquin de Guzman only, and on the northwest by public lands and by the ranchos of Mabantad, Carabatan and Andarayan?

A. I have not bothered about looking at the registry books.

Q. Where did you get the boundary lines which you have alleged in paragraph 3 of your complaint to be the boundary lines of the said Hacienda de San Luis y la Concepcion?

A. From the deeds and titles which I have exhibited at this time.

Q. Can you state whose duty it is generally to present the documents of the Compañia General for registration?

A. The head officer or the cashier, or some other confidential employee of the Company.

Q. Can you state precisely when the Compañia General de Tabacos purchased the Hacienda in question, and, if so, how do you know this?

A. The deeds show the dates and the consideration paid for the purchase of these haciendas.

Q. How many entries of the property of the hacienda of San Luis y la Concepcion are there in the property register of the province of Isabela?

A. There must be an entry for each one of them exhibited here, and also for those which I have in the office.

Q. How is it then that the notes at the foot of the different documents offered in evidence give the same folio and the same number of inscription?

A. This should be answered by the registrar of property
38 and not by me, for I am not familiar with the Mortgage Law.

Q. Then I understand you to say that there is more than one inscription?

A. I insist upon what I stated before, and furthermore, that every owner of property who has a title or titles delivers them to the registrar, in order that the latter may act in accordance with his scientific knowledge or the requirements of the Mortgage Law.

Q. To what inscription do you refer in your complaint, paragraph 3 thereof, by the words "which said hacienda is duly recorded in the registry of property of this province?"

A. To the entries shown on each one of those dated, signed and sealed by the registrar.

Q. And this means that all the documents offered in evidence are recorded in the same volume and page and under the same number in the property register?

A. All with respect to what I have said before concerning the register and that I ask the Court to relieve me from answering certain questions concerning the Mortgage Law, of which I am ignorant, as I never studied it for the profession of law.

Q. Do you know what the boundaries of the Hacienda de San Luis y la Concepcion, described in the document of transfer of the said hacienda from Antonio Pascual Casal to the Compañia General de Tabacos de Filipinas, are?

A. That the boundaries of the hacienda are expressed in each instrument in particular and in all in general.

Q. Why does the complainant state different boundaries from those indicated in the document of transfer numbered 8?

39 A. The boundaries were all completed with the plan which is marked document No. 10.

Q. By whose orders were those boundaries rectified or amplified?

A. They were not amplified. They were rectified by my order as representative of the Company, and the former rectifications were made by order of my predecessors.

Q. For the purpose of proving the ownership of the Compañia General de Tabacos de Filipinas over the arrable lands of Joaquin Guzman and the ranchos of Minanga and Mabantad do you rely upon the inscription in Volume I of the Municipality of Cauayan, folio 118, property No. 75, and provisional book 2 of the Municipality of Angadanan, folio 7, property No. 182?

The attorney for the plaintiff here objected to the answering of the question, upon the ground that it was irrelevant, as the witness had repeatedly stated that for the purpose of proving the ownership of the Company he had presented the title deeds. Upon this the Judge rules that the question was in effect irrelevant, and that he would not permit it to be answered. Against this ruling the defendant excepted.

Q. Do you know why the ownership of the hacienda in question was recorded in the register of this province on the 17th day of September, 1898, and not when the Mortgage law was published in 1893?

The Judge also rules that this question was irrelevant, because the witness has already stated that he was not here for the
40 purpose of answering questions on Mortgage Law.

Q. Do you know Juan C. Rodrigo?

A. No sir.

Q. Do you know whether he is here or elsewhere?

The question ruled out. Exception noted.

Q. Has the Compañia General de Tabacos buildings on the Hacienda de San Luis y la Concepcion, and if so, where are they?

A. It has three; one old one, where its employees were assassinated, which is now being remodeled; another built last year, and also another built last year and completed this year. The first two are in the northern part of the hacienda, and the last in the southern part.

Q. Can you indicate with more precision the situation of the two buildings in the northern part of the hacienda, by indicating their situation on the map?

A. In the northern part of the said hacienda, standing from north to south and upon the property of the Company.

Q. When was it built?

A. The question has already been answered.

Q. Was the murder referred to by you prosecuted by the Government, and if not, do you know who the guilty parties were?

A. The colonel who was in command in the province at that time took great interest in prosecuting it. As for myself, I do not know who the guilty parties are.

Q. Have you any information of any kind concerning the extent of the land which was possessed by the deceased Joaquin Guzman?

A. That which is marked on the plan.

41 The foregoing testimony was affirmed and approved.

M. MACIAS.

At this point the attorney for the defendants stated that as the witness Macias had refused to answer different questions concerning the recordation of the ownership of the hacienda in question, stating that he had no knowledge of the collateral proceedings, an additional objection is now made to the admission of the documents numbered 1 to 9 as evidence, upon the ground that the conveyance of the hacienda in question by the estate of Antonio Pascual Casal to the Compañia General de Tabacos was held by the registrar Juan Conde to be unregistrable in 1895, March 9th, and also upon the ground that the essential circumstances of the acquisition do not appear in the register, as required by Article 20 of the Mortgage Law.

Replying to the objection of the attorney for the defendant, the Attorney for the plaintiff Company stated that the objection is not well taken, upon the ground that the fact that Mr. Macias has no knowledge of the collateral proceedings is not proof of the falsity or nullity of the documents and their inscription, nor can this be an obstacle to their admission in the courts, as it is not required as a condition except in Articles 389 of the Mortgage Law and 435 of the

Regulations; that the objection can not be made upon the ground that the registrar, Juan Conde, refused to record the documents in the books because of lack of personality of the Company, for the reason that this objection is overcome by the inscription
42 made by the Licentiate Juan Rodrigo; that the registrar Juan Conde was not at that time aware of the corporate existance of the Compañia General de Tabacos, and that this was very natural since the same question arises in this suit and was the ground for a demurrer, which resulted in the plaintiff's presenting documents proving the existence of the plaintiff Company, which documents are now of record; apart from the fact that the opinion of a registrar is nothing more than an opinion and has not the effect of a final judgment.

With respect to the fact that the special circumstances of the acquisition do not appear in the register, as required by article 20 of the Mortgage Law, this is no ground for refusing the admission of these documents by the court, as articles 389 and 435 above cited do not make such a distinction, and where the law does not distinguish neither should we,

The Judge, after hearing argument, made the following ruling: The documents presented by the plaintiff are recorded in the property register. The question as to whether the recordation was or was not made with all the formalities of the Mortgage Law, which is a ground for the exception, is a matter which may affect the final decision when the time arrives for passing upon the efficacy of the inscription of the titles, but can not be an obstacle to the admission of the documents, and it is therefore decided that the said documents be admitted as formerly held. The defendants excepted to
43 this ruling.

Sworn Testimony of Manuel Nieto.

Q. Please answer the general questions.

A. My name is Manuel Nieto; I am a resident of Cagayan, a merchant by occupation and an employee of the Compañia General de Tabacos.

Q. Do you remember having been on the hacienda of San Luis y la Concepcion on February 29, 1896, in company with Jose Poo, Manuel Rodriguez, Fulgencio Bunnuang and other persons?

A. Yes, sir.

Q. What were you doing there?

A. Making a contract with certain individuals who had taken the liberty of working lands belonging to the Company, which individuals were well aware of the rights of the Company, and they agreed to accept that contract as a just one. I desire to state further that the contract was made without any violence or coercion, and by my exclusive intervention, these men speaking in their own language, and they agreed to the contract, which, as a matter of fact, was advantageous to them, as all that was required of them was that they should recognize the ownership of the Company and deliver to

the Company the tobacco gathered by them at the current market rates.

Q. Please read the document numbered 13 and state if it is the same document to which you refer in the preceding answer?

A. It is the same.

Q. You recognize your signature and rubric on the said
44 document?

A. Yes, sir, I do.

Q. Please read the names of the defendants and state if, on the date on which the document in question was written, these men were on the lands included in the hacienda de San Luis y la Concepcion.

A. Yes, sir, Justo Allam, Arcadio Tubera, Eugenio Guzman and Agustin de la Fuente were the ones who voluntarily signed the contract, without making any objection thereto.

Q. Did they all sign?

A. Those who knew how to sign did so, and those who did not sign requested other persons to sign for them.

Q. How do you know that all those persons who do not appear in this contract which you have just read were not on the land included in the hacienda in 1896?

Question ruled out as irrelevant.

Q. And the other defendants, in addition to the four whom you have just mentioned, were they also, on that date, on lands included in the Hacienda de San Luis y la Concepcion?

A. No, sir, there were only those four persons, because I went over the whole hacienda, and if there had been any other tenants it is evident that they would have all signed the contract.

Q. How many years have you lived in the valley, and how many years have you been an employee of the Company?

A. I have lived in the valley twenty six years, and have been an employee of the Company since 1882.

Q. What was your position with the Compañia General on the 29th of February, 1896?

45 A. I was representative of the Compañia General de Tabacos in this province.

Q. In what house was the contract in question signed?

A. In a house which no longer exists.

Q. Can you describe the situation of the house?

A. It was a place on the hacienda very near where the warehouse now stands.

Q. Were you present there all the time these men signed?

A. Yes sir; and afterwards I carried the document away with me.

Q. Did you take the contract there already drafted, or was it drafted where it was signed on the date indicated?

A. No sir, it was drawn up after the terms of the contract had been discussed and after they were convinced that they were to sign a just agreement.

Q. Do you remember how many hours were devoted to the drafting of the instrument and to the signature of the contract in question?

A. It was all done in three hours, I believe.

Q. Do I correctly understand you to state that the contract was signed with advantageous conditions until such time as the Company might see fit to make them more onerous?

A. Nothing as to make them more onerous, but as to modifying them or, if necessary, bettering them.

Q. Have the men alleged to have signed the contract delivered their tobacco to the Company at appraised values up to this date?

A. They delivered the tobacco during the first years. Then the revolution came. Some of them have made deliveries and
46 others stopped making deliveries, taking advantage of that disturbance.

Q. Do you know whether Jacinto Guzman, whose name is among the signatures on the contract in question was at any time sued by the Compañia General for breach of this contract?

A. I do not know.

Q. Can you state on what part of the hacienda the men alleged to have signed the contract numbered 13 were living, and what was the extent and location of the fields which they occupied?

A. I can only say that they lived within the perimeter of the lands of the Company.

Q. What was the last time that you went over the hacienda?

A. Two months ago I went over part of the hacienda.

Q. Were you present at the survey of the hacienda at any time, and if so, when?

A. Yes sir, I was present at the survey before the hacienda belonged to the Company. This was in 1882, if I recollect correctly.

Q. Do you remember the boundaries fixed at that time?

The judge ruled out the question as not having any bearing on the issues.

Q. Are the lands which you assisted to survey the same as those which were subsequently transferred to the Compañia General de Tabacos and which are now known as the Hacienda de San Luis y la Concepcion?

A. Yes sir, the same.

Q. Do you know what are the boundaries of this land transferred to the Company and known as the Hacienda de San Luis y la
47 Concepcion?

A. I do not know the boundaries, but the Company has documents which will answer the question.

Q. Is the land referred to in the document numbered 8, which you have just recognized, the same and has it the same boundaries as that which you assisted in surveying?

A. The document will answer your question.

Q. Do you recognize document numbered 8, and are you informed of its contents?

The Judge stated that public documents speak for themselves, and that therefore they need no proof, and the question was ruled out.

The attorney for the defendants admitted that the document numbered 8 speaks for itself, but insisted that his question with respect to the document is only for the purpose of determining whether the

witness recognizes it and knows its contents. The Judge replied that the witness was called to testify concerning the contract numbered 13, and that his examination should therefore be limited to that point. As to whether he does or does not recognize the document numbered eight, this is not a matter upon which he could be interrogated, because he did not present it, and if it is admitted that it speaks for itself all questions would appear to be unnecessary. "I therefore rule out the question, and beg you, for the sake of the prompt administration of justice, to have the goodness to frame your questions less capriciously and make them more pertinent,
48 because it does not appear to be just that a witness called to prove one particular fact should be tortured with questions which are enough to disconcert the most selfpossessed of men."

The attorney said that he excepted.

Q. How long have you been the head manager in this Capital?
A. I do not remember, but more or less about six years.

The foregoing testimony was approved and signed.

M. NIETO.

Number 1.

Joaquin Chinchilla y Diaz de Oñate, General Intendent of the Treasury Department of these Islands.—Whereas Doroteo Faustino has denounced the piece of public land situated at Mabantad, within the town of Cauayan, province of Isabela de Luzon, the superficial area of which is ninety hectareas, ninety seven areas and eighty centiareas, or thirty two quiñones, five balitas and five loanes, bounded on the north by the river Rio Grande de Cagayan, on the east by public lands denounced by Santiago Garcia, on the south by public lands denounced by Ponciano Hernandez and on the west by the forest of the ranch Mabantad; and whereas, by decree of this office of July 6th last the applicant was awarded the ownership of the land referred to upon payment of its value, the fees of "media annata" and other proper fees required by the Laws in force, and having paid me the sum of $191.95 for the total value of the
49 land, and the sum of $8.63⅝ for the fees of "media annata" and dispensation of the royal confirmation, I issue this title, so that by virtue thereof the said Doroteo Faustino may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form. Done in Manila the 20th of October, in the year one thousand eight hundred and eighty two.—Joaquin Chinchilla—The Central Administrator of government Monopolies—Francisco Calvo Muños—Signature fees, five pesos—See the note on the back—A seal which reads "General Intendence of the Public Treasury of the Philippines—Title deed to a piece of public land situated at Mabantad, within the town of Cauayan, in the province of Isabela de

Luzon, issued in favor of Doroteo Faustino by decree of the General Intendence of the Treasury of the 11th inst., in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay its value when the whereabouts of the document and the seals which the petitioner delivered to the Sub-delegation of the Treasury Department in the province referred to are discovered.—With the corresponding effects this is so recorded, in compliance with the said decree.

Manila, October 20, 1882.—Calvo.—A seal reading "Central
50 Administration of Government Monopolies. Philippine Islands.—Recorded in the Central Administration of Government Monopolies. Manila, the twenty sixth of October, one thousand eight hundred and eighty two.—Calvo.—A seal reading "Central Administration of Government Monopolies.—Philippine Islands.

Number seven hundred and forty five. In Manila the fifth of December, one thousand eight hundred and eighty-two, before me, Miguel Torres, Licentiate of Law and notary public of this city, and the witnesses hereinafter named, personally appeared Doroteo Faustino, of age, a resident of the town of Malibay, this province, a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the execution of this public instrument of sale, which I believe to be true, nothing to the contrary being known to me, he deposed and said:

First. Property.—That he is the owner of a piece of public land situated at Mabamtad, in the town of Cauayan, Province of Isabela de Luzon, the area of which is ninety hectareas, ninety seven areas and eighty centiareas, or thirty two puiñones, five balitas and five loanes, bounded on the north by the Rio Grande de Cagayan, on the east by public lands denounced by Santiago Garcia, on the south by public lands denounced by Ponciano Hernandez, and on the west by the forest of the rancho Mabantad.

Second. Title.—That the said land was purchased by the deponent from the Royal Treasury for the sum of one hundred and
51 ninety one pesos and ninety five cents, for the total value of the land, and eight pesos and sixty three and five eighths cents for the fees of "media annata" and the dispensation of the royal confirmation, which total sum of two hundred pesos and fifty eight cents and five eighths, was paid by him as shown by the deed issued in his favor by his Excellency the Intendent Joaquin Chinchilla, on the twentieth of October last, which was exhibited to me and to which I refer, as does the deponent; and

Third. Sale.—That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vicinity, for the sum of two hundred and one pesos, and now carries the agreement into effect and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses and easements, to Antonio Pascual Casal for the sum of two hundred and one pesos, the receipt of which he acknowledges hereby, in current coin, to his entire satisfaction; as to which receipt, the same being true and not having been made in my presence, he waives the exception of

the money not paid in cash and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal the ownership, rights and actions which he has or may have to the said land, authorizing him to take possession thereof and to dispose of it at his will as of a thing lawfully acquired, to which end he now delivers him the title deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus effecting the symbolic
delivery of the said land, which he declares to be free of all
52 incumbrances, binding himself to warrant and defend the same at all times.

Acceptance.—The purchaser, Antonio Pascual Casal, of age, a proprietor and a resident of this vicinity, personally known to me, to which I certify, and, I being present, said: That he accepts the sale made to him by this instrument in the precise terms in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of his acceptance.

Finally, both parties declare that no fraud or lesion of any kind has been present in this contract, that the two hundred and one pesos which are the consideration of this sale are a just consideration, and that if the land should be worth more the excess, whether little or great, is made a matter of mutual donation, perfect and irrevocable, with an express waiver of the law with respect to contracts in which there may be lesion in more or less than one half of the just price, and that the four years fixed by the law for the exercise of the action is likewise waived, it being the will of the parties that from this moment this contract shall be regarded as completed and consummated, upon the guarantee of all their property, present and future. So declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, and personally known to me; and all having been informed of their right to read this document for themselves, of which all the
parties hereto have availed themselves; after which all signed
53 and ratified the foregoing, to which I certify.—Doroteo Faustino—Antonio P. Casal—Ambrosio Aquino—Mariano Palacio—In the presence of Licentiate Miguel Torres.—Copy of the original which appears on pages two thousand five hundred and seventy six over to two thousand five hundred and seventy nine of my public protocol for the present year, to which I refer. At the request of the parties I issue this first copy for delivery to the purchaser, signed and sealed by me in Manila the date of its execution; to which I certify. Seal—Licentiate Migual Torres.—Fees one peso and five cents. Numbers 16 and 17.

The parcel to which this instrument refers forms part of the Hacienda de San Luis y la Concepcion, recorded in volume one of Cauayan, 11th archive, folio 118, estate numbered seventy five, and provisional volume two of Angadanan, archive 1, folio 7, property numbered 182, both first inscriptions, Ilagan, September 17, 1898. Licentiate Juan Garcia Rodrigo.—A seal reading "Property Register of la Isabela."

The foregoing agrees with the original which has been taken from this record, to which I refer.

Ilagan, December, 1902.

54 Number 2.

Joaquin Chinchilla y Diez de Oñate, General Intendent of the Treasury Department of these Islands.—Whereas Santiago García has denounced the piece of public land situated at Nacampean, within the town of Cauayan, province of Isabela de Luzon, the superficial area of which is eighty two hectareas, fifty-nine areas and sixty centiareas, or twenty-nine quiñones, five balitas, 4 loanes, and eleven square brazas, bounded on the north by the river Rio Grande de Cagayan, on the south by public lands denounced by Ponciano Hernandez and Marcos Patiño, on the east by lands occupied by Joaquín Guzman, and on the west by lands denounced by Doroteo Faustino; and whereas, by decree of this office of June 30th last the applicant was awarded the ownership of the land referred to upon payment of its value, the fees of "media-annata," and other proper fees required by the laws in force, and having paid me the sum of $165.13 for the total value of the land, and the sum of $7.43 for the fees of "media annata" and dispensation of the royal confirmation, I issue this title, so that by virtue thereof the said Santiago García may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form. Done in Manila the 20th of October, in the year one thousand eight hundred and eighty two.—Joaquín
55 Chinchilla—The Central Administrator of government Monopolies—Francisco Calvo Muñoz—Signature fees, five pesos—See the note on the back—A seal which reads "General Intendence of the Public Treasury of the Philippines"—Title deed to a piece of public land situated at Nacampean, within the town of Cauayan, in the province of Isabela de Luzon, issued in favor of Santiago García by decree of the General Intendence of the Treasury of the 11th inst., in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay its value when the whereabouts of the document and the seals which the petitioner delivered to the Sub-delegation of the Treasury Department in the province referred to are discovered.—With the corresponding effects this is so ordered, in compliance with the said decree. Manila, October 20, 1882.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."—Recorded in the Central Administration of Government Monopolies. Manila, the twenty sixth of October, one thousand eight hundred and eighty two.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."

Number seven hundred and sixty nine. In Manila the twelfth of

December, one thousand eight hundred and eighty-two, before me, Miguel Torres, Licentiate of Law and notary public of this city, and the witnesses hereinafter named, personally appeared Santiago García, of age, a resident of the town of Malibay, this province,
56 a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the execution of this public instrument of sale, which I believe to be true, nothing to the contrary being known to me, he deposed and said: First. Property.—That he is the owner of a piece of public land situated at Nacampean, in the town of Cauayan, Province of Isabela du Luzon, the area of which is eighty two hectareas, fifty six areas and sixty centiareas, or twenty nine quiñones, five balitas, four loanes and eleven square brazas, bounded on the north by the river Rio Grande de Cagayan, on the south by public lands denounced by Ponciano Hernandez and Marcos Patiño, on the east by lands occupied by Joaquín Guzman, and on the west by lands denounced by Doroteo Faustino. Second. Title.—That the said land was purchased by the deponent from the Royal Treasury for the sum of one hundred sixty five pesos and thirteen cents, for the total value of the land, and seven pesos and forty three cents for the fees of "media annata" and the dispensation of the royal confirmation, which total sum of one hundred seventy two pesos and fifty six cents, was paid by him as shown by the deed issued in his favor by his Excellency, the Intendent Joaquín Chinchilla, on the twentieth of October last, which was exhibited to me and to which I refer, as does the deponent; and Third. Sale.—That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vicinity, for the sum of one hundred seventy three pesos and now carries the agreement into effect and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses and
57 easements, to Antonio Pascual Casal for the sum one hundred seventy three pesos, the receipt of which he acknowledged hereby, in current coin, to his entire satisfaction; as to which receipt, the same being true and not having been made in my presence, he waives the exception of the money not paid in cash and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal the ownership, rights and actions which he has or may have to the said land, authorizing him to take possession thereof and to dispose of it at his will as of a thing lawfully acquired, to which end he now delivers him the title deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus effecting the symbolic delivery of the said land, which he declares to be free of all incumbrances, binding himself to warrant and defend the same at all times.—Acceptance. The purchaser, Antonio Pascual Casal, of age, a proprietor and a resident of this vicinity, personally known to me, to which I certify, and, I being present, said: That he accepts the sale made to him by this instrument in the precise terms in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of this acceptance.

Finally, both parties declare that no fraud or lesion of any kind has been present in this contract, that the hundred and seventy-three pesos which are the consideration of this sale are a just consideration, and that if the land should be worth more the excess, whether little or great, is made a matter of mutual donation, perfect and irrevocable, with an express waiver of the law with respect to con-
58 tracts in which there may be lesion in more or less than one half of the just price, and that the four years fixed by the law for the exercise of the action is likewise waived, it being the will of the parties that from this moment this contract shall be regarded as completed and consum-ated, upon the guarantee of all their property, present and future. So declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, and personally known to me; and all having been informed of their right to read this document for themselves; after which all signed and ratified the foregoing, to which I certify.—Santiago García—Antonio P. Casal—Ambrosio Aquino—Mariano Palacio—In the presence of Licentiate Miguel Torres.—Copy of the original which appears from the back of page 2729 to 2632 of my public protocol for the present year, to which I refer. At the request of the parties I issue this first copy for delivery to the purchaser, signed and sealed by me in Manila, the twelfth day of December of the year one thousan- eight hundred eighty two. Seal—Licenciate Miguel Torres.—Fees one peso and five cents. Numbers 16 and 17.

The parcel to which this instrument refers forms part of the Hacienda de San Luis y la Concepcion, recorded in volume one of Cauayan, 11th archive, folio 118, estate numbered 75, and provisional volume two of Angadanan, archive 1, folio 7, property numbered 182, both first inscriptions. Ilagan, September 17, 1898. Licentiate Juan Garcia Rodrigo.—A seal reading "Property Register of la Isabela."

The foregoing agrees with the original which has been taken from this record, to which I refer. Ilagan, December 1902.

Number 3.

Joaquin Chinchilla y Diez de Oñate, General Intendent of the Treasury Department of these Islands.—Whereas Potenciano Hernandez has denounced the piece of public land situated at Mabantad, within the town of Cauayan, province of Isabela de Luzon, the superficial area of which is 92 heciareas & 16 areas or 32 quiñones,
59 9 balitas, 7 loanes and 37 square brazas, bounded on the north by public lands denounced by Santiago García, on the east by public lands denounced by Marcos Patiño, on the south by Potenciano de los Santos, and on the west by the forest of the ranch Mabantad; and whereas, by decree of this office of June 30th last the applicant was awarded the ownership of the land referred to upon payment of its value, the fees of "media-annata," and other proper fees required by the Laws in force, and having paid me the sum of $184.32 for the total value of the land, and the sum of

$8.29 3/8 for the fees of "media-annata" and dispensation of the royal confirmation, I issue this title, so that by virtue thereof the said Potenciano Hernandez may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form. Done in Manila the 20th of October, in the year one thousand eight hundred and eighty two.—Joaquín Chinchilla—The Central Administrator of government Monopolies—Francisco Calvo Muñoz—Signature fees, five pesos—See the note on the back—A seal which reads "General Intendence of the Public Treasury of the Philippines"—Title deed to a piece of public land situated at Mabantad, within the town of Cauayan, in the province of Isabela de Luzon, issued in favor of Potenciano Hernandez by decree of the General Intendence of the Treasury of the 11th inst., in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay its value when
the whereabouts of the document and the seals which the
60 petitioner delivered to the Sub-delegation of the Treasury
Department in the province referred to are discovered.—With the corresponding effects this is so ordered, in compliance with the said decree. Manila, October 20, 1882.—Calvo.—A seal reading "Central Administrator of Government Monopolies. Philippine Islands."—Recorded in the Central Administration of Government Monopolies. Manila, the twenty six- of October, one thousand eight hundred and eig-ty two.—Calvo—A seal reading "Central Administration of Government Monopolies. Philippine Islands."

Number seven hundred forty eight. In Manila the fifth of December, one thousand eight hundred and eighty-two, before me, Miguel Torres, Licenciate of Law and notary public of this city, and the witnesses hereinafter named, personally appeared Potensiano Hernandez, of age, a resident of the town of Malibay, this province, a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the execution of this public instrument of sale, which I believe to be true, nothing to the contrary being known to me, he deposed and said: First: Property. That he is the owner of a piece of public land situated at Mabantad, in the town of Cauayan, Province of Isabela de Luzon, the area of which is 92 hectareas and 16 areas or 32 quiñones, 9 balitas 7 loanes and 32 square brazas, bounded on the north by public lands denounced by Santiago García, on the east by public lands denounced by Marcus Patiño, on the south by public lands denounced by Ponciano de los Santos, and on the west by the forest of the ranch Mabantad; Second: Title. That the said land was purchased by the deponent from the Royal Treasury for the sum of $184.32, for the total value of the land and $8.29 3/8 for the fees of "media-annata" and the dispensation of the royal confirmation,
which total sum of $192.61 3/8, was paid by him as shown by
61 the deed issued in his favor by his Excellency the Intendent
Joaquín Chinchilla, on the twentieth of October last, which

was exhibited to me and to which I refer, as does the deponent; and Third: Sale. That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vecinity, for the sum of $193.00 and now carries the agreement into effect and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses and easements, to Antonio Pascual Casal for the sum of $193.00, the receipt of which he acknowledged hereby, in current coin, to his entire satisfaction; as to which receipt the same being true and not having been made in my presence, he waives the exception of the money not paid in cash and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal the ownership, rights and actions which he has or may have to the said land, authorizing him to take possession thereof and to dispose of it at his will as of a thing lawfully acquired, to which end he now delivers him the title deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus effecting the symbolic delivery of the said land, which he declares to be free of all incumbraces, binding himself to warrant and defend the same at all times.—Acceptance. The purchaser, Antonio Pascual Casal, of age, a proprietor and a resident of this vecinity, personally known to me, to which I certify, and, I being present, said: That he accepts the sale made to him by this instrument in the precise terms in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of this acceptance.

Finally, both parties declare that no fraud or lesion of any kind has been present in this contract, that the $193.00—pesos
62 which are the consideration of this sale are a just consideration, and that if the land should be worth more the excess, whether little or great, is made a matter of mutual donation, perfect and irrevocable, with an express waiver of the law with respect to contracts in which there may be lesion in more or less than one half of the just price, and that the four years fixed by the law for the exercise of the action is likewise waived, it being the will of the parties that from this moment this contract shall be regarded as completed and consum-ated, upon the guarantee of all their property, present and future. So declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, and personally known to me; and all having been informed of their right to read this document for themselves: after which all signed and ratified the foregoing, to which I certify.—Potenciano Hernandez—Antonio P. Casal—Ambrosio Aquino—Mariano Palasio—In the presence of Litentiate Miguel Torres.—Copy of the original which appears on pages 2574 over to 2576 of my public protocol for the present year, to which I refer. At the request of the parties I issue this first copy for delivery to the purchaser, signed and sealed by me in Manila, the fifth day of December of the vear one thousand eight hundred eighty two. Seal—Licenciate Miguel Torres—Fees one peso and five cents. Numbers 16 and 17.

The parcel to which this instrument refers forms part of the

Hacienda de San Luis y la Concepción, recorded in volume one of Cauayan, 11th archive, folio 115, estate numbered 75, and provisional volume two of Angadanan, archive 1, folio 7, property numbered 182, both first inscriptions. Ilagan, September 17, 1898. Licentiate Juan García Rodrigo—A seal reading "Property Register of la Isabela."

The foregoing agrees with the original which has been taken from this record, to which I refer. Ilagan, December 23, 1902.

Number 4.

Joaquin Chinchilla y Diez de Oñate, General Intendent of the Treasury Department of these Islands.—Whereas Marcos Patiño has denounced the piece of public land situated at Cornayan, within the town of Cauayan, province of Isabela de Luzón, the superficial area of which is 63 hectareas 96 acreas and 40 centiareas or 22 quiñones, 8 balitas and 8 loanes bounded on the N. by the river Rio Grande de Cagayan, by lands occupied by Joaquin Guzman, and by
63 public lands denounced by Santiago Barcía, on the east by the estero Cornayan, on the south by public lands denounced by Potenciano de los Santos, and on the west by public lands denounced by Ponciano Hernandez; and whereas, by decree of this office of June 30th last the applicant was awarded the ownership of the land referred to upon payment of its value, the fees of "Media-annata," and other proper fees required by the Laws in force, and having paid me the sum of $127.92 for the total value of the land, and the sum of $5.75 4/8 for the fees of "media annata" and dispensation of the royal confirmation, I issue this title, so that by virtue thereof the said Marcos Patiño may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form. Done in Manila the 20th of October, in the year one thousand eight hundred and eighty two.—Joaquín Chinchilla—The Central Administrator of government Monopolies—Francisco Calvo Muñoz—Signature fees, five pesos—See the note on the back—A seal which reads "General Intendence of the Public Treasury of the Philippines"—Title deed to a piece of public land situated at Cornayan, within the town of Cauayan, in the province of Isabela de Luzon, issued in favor of Marcos Patiño by decree of the General Intendence of the Treasury of the 11th inst., in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay its value when the whereabouts of the document and the seals which the prtitioner delivered to the Sub-delegation of the Treasury Department in the province referred to are discovered.—With the corresponding
64 effects this is so ordered, in compliance with the said decree. Manila, October 20, 1882.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."—Recorded in the Central Administration of Government

Monopolies. Manila, the twenty sixth of October, one thousand eight hundred and eighty two.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."

Seven hundred forty seven. In Manila fifth of December, one thousand eight hunred and eighty-two, before me, Miguel Torres, Licenciate of Law and notary public of this City, and the witnesses hereinafter named, personally appeared Marcos Patiño, of age, a resident of the town of Malibay, this province, a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the execution of this public instrument of sale, which I believe to be true, nothing to the contrary being known to me, he deposed and said: First: Property. That he is the owner of a piece of public land situated at Cornayan, in the town of Cauayan, Province of Isabela de Luzon, the area of which is 63 hectareas 93 areas and 40 centiareas or 22 quiñones, 8 balitas and 8 loanes bounded on the north by the river Rio Grande de Cagayan, by lands occupied by Joaquin Guzman, and by public lands denounced by Santiago García on the east by the Estero Cornayan, on the south by public lands denounced by Potenciano de los Santos, and on the west by public lands denounced by Ponciano Hernandez; Second: Title. That the said land was purchased by the deponent from the Royal Treasury for the sum of $127.92 for the total value of the land, and $5.75 4/8 for the fees of "media annata" and the dispensation of the royal confirmation, which total sum of $133.67 4/8 was paid by him as shown by the deed issued in his favor by his Excellency the Intendent Joaquín Chinchilla, on the twentieth of October last, which was exhibited to me and to which I refer, as does the deponent; and Third:
65 Sale. That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vecinity, for the sum of $134.00 and now carries the agreement into effect and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses and easements, to Antonio Pascual Casal for the sum $134.00 the receipt of which he acknowledged hereby, in current coin, to his entire satisfaction; as to which receipt, the same being true and not having been made in my presence, he waives the exception of the money not paid in cash and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal the ownership, rights and actions which he has or may have to the said land, authorizing him to take possession thereof and to dispose of it at his will as of a thing lawfully acquired, to which and he now delivers him the title deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus effecting the symbolic delivery of the said land, which he declares to be free of all incumbrances, binding himself to warrant and defend the same at all times.—Acceptance. The purchaser, Antonio Pascual Casal, of age, a proprietor and a resident of this vicinity, personally known to me, to which I certify, and, I being present, said: That he accepts the sale made to him by this instrument in the precise term in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of this acceptance.

Finally, both parties declare that no fraud or lesion of any kind has been present in this contract, that the $134.00—pesos which are the consideration of this sale are a just consideration, and that if the land should be worth more the excess, whether little or great, is made a matter of mutual donation, perfect and irrevocable, with an express waiver of the law with respect to contracts in which there may be lesion in more or less than one half of the just price, and that the four years fixed by the law for the exercise of the action is likewise waived, it being the will of the parties that from this moment this contract shall be regarded as completed and consum-ated, upon the guarantee of all their property, present and future. Se declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, and personally known to me; and all having been informed of their right to read this document for themselves; after which all signed and ratified the foregoing, to which I certify.—Marcos Patiño—Antonio P. Casal—Ambrosio Aquino—Mariano Palacio—In the presence of Licentiate Miguel Torres.—Copy of the original which appears on pages 2571 over to 2574 of my public protocol for the present year, to which I refer. At the request of the parties I issue this first copy for delivery to the purchaser, signed and sealed by me in Manila, on the day of its execution—Licenciate Miguel Torres.—Fees one peso and five cents. Numbers 16 and 17.

The parcel to which this instrument refers forms part of the Hacienda de San Luis y la Concepción, recorded in volume one of Cauayan, 11th archive, folio 118, estate numbered seventy nine, and provisional volume two of Angadanan, archive 1, folio 7 property numbered 182, both first inscriptions. Ilagan, September 17, 1898. Licentiate Juan García Rodrigo.—A seal reading "Property Register of la Isabela."

The foregoing agrees with the original which has been taken from this record, to which I refer.

Ilagan, December 23, 1902.

FRANCISCO TACCAD,
Escribano del Juzgado.

67 Number 5.

Joaquin Chinchilla y Diez de Oñate, General Intendent of the Treasury Department of these Islands.—Whereas Potenciano de los Santos has denounced the piece of public land situated at Cornayan, within the town of Cauayan, Province of Isabela de Luzon, the superficial area of which is 88 hectareas, 81 areas and 38 centiareas or 31 quiñones, 7 balitas, 7 loanes and 65 square brazas, bounded on the north by public lands denounced by Ponciano Hernandez and Marcos Patiño, on the east by the Estero Cornayan, on the south by public land denounced by Valentin Vizcarra, and on the east by the forest of the ranch Carabatan; and whereas of this office of June 30th last the applicant was awarded the ownership of the land referred to upon payment of its value, the fees of "media-annata," and other proper fees required by the Laws in force, and having paid me the sum of

$177.62 for the total value of the land, and the sum of $7.98⅝ for the fees of "media annata" and dispensation of the royal confirmation, I issue this title, so that by virtue thereof the said Potenciano de los Santos may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon under pain of nullity if the contrary is done, so that it may be entered in that government and possenssion may be given in the usual legal form. Done in Manila the 20th of October, in the year one thousand eight hundred and eighty two.—Joaquin Chinchilla—The Central Administrator of government Monopolies—Francisco Calvo Muñoz—Signature fees, five pesos—See the note on the back—A seal which reads "General Intendence of the Public Treasury of the Philippines"—Title deed to a piece of public land situated at Cornayan within the town of Cauayan,
68 in the province of Isabela de Luzon, issued in favor of Potenciano de los Santos by decree of the General Intendence of the Treasury of the 11th inst., in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay its value when the whereabouts of the document and the seals which the petitioner delivered to the Sub-delegation of the Treasury Department in the province referred to are discovered.—With the corresponding effects this is so ordered, compliance with the said decree. Manila, October 20, 1882.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."—Recorded in the Central Administration of Government Monopolies. Manila, the twenty sixth of October, one thousand eight hundred and eighty two.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."

Number seven hundred eighty. In Manila the fourteenth of December, one thousand eight hundred and eighty-two, before me, Miguel Torres, Licenciate of Law and notary public of this city, and the witnesses hereinafter named, personally appeared Potenciano de los Santos, of age, a resident of the town of Malibay, this province, a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the execution of this public instrument of sale, which I believe to be true, nothing to the contrary being known to me, he deposed and said: First. Property.—That he is the owner of a piece of public land situated at Cornayan, in the town of Cauayan. Province of Isabela de Luzon, the area of which is 88 hectareas, 81 areas and 38 centiareas or 31 quiñones, 7 balitas, 7 loanes and 65 square brazas, bounded on the
69 north by public lands denounced by Potenciano Hernandez and Marcos Patiño, on the east by the Estero Cornayan, on the south by public land denounced by Valentin Biscarra, and on the east by the forest on the ranch Carabatan; Second: Title.—That the said land was purchased by the deponent from the royal Treasury for the sum of $177.62 for the total value of the land, and $7.98⅝ for the fees of "media annata" and the dispensation of the royal confirmation, which total sum of $185.60⅝, was paid by him as shown

by the deed issued in his favor by his Excellency the Intendent Joaquin Chinchilla, on the twentieth of October last, which was exhibited to me and to which I refer, as does the deponent; and Third: Sale.—That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vecinity, for the sum of $186.00 and now carries the agreement into effect and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses and easements, to Antonio Pascual Casal for the sum $186.00, the receipt of which he acknowledged hereby, in current coin, to his entire satisfaction; as to which receipt, the same being true and not having been made in my presence, he waives the exception of the money not paid in cash and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal the ownership, rights and actions which he has or may have to the said land, authorizing him to take possession thereof and to dispose of it at his will as of a thing lawfully acquired, to which end he now delivers him the title deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus effecting the symbolic delivery of the said land which he declares to be free of all incumbrances, binding himself to warrant and defend the same at all times.—Acceptance. The purchaser, Antonio Pascual Casal, of age, a proprietor and a resident of this vecinity, personally known to me, to which I certify, and, I being present, said: That he accepts the sale made to him by this instrument in the precise terms in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of this acceptance.

Finally, both parties declare that no fraud or lesion of any kind has been present in this contract, that the $186.00—pesos which are the consideration of this sale are a just consideration, and that if the land should be worth more the excess, whether little or great, is made a matter of mutual donation, perfect and irrevocable, with an express waiver of the law with respect to contract in which *which* there may be lesion in more or less than one half of the just price, and that the four years fixed by the law for the exercise of the action is likewise waived, it being the will of the parties that from this moment this contract shall be regarded as completed and consum-ated, upon the guarantee of all their property, present and future. So declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, and personally known to me; and all having been informed of their right to read this document for themselves; after which all signed and ratified the foregoing, to which I certify.—Potenciano de los Santos—Antonio P. Casal—Ambrosio Aquino—Mariano Palacio—In the presence of Licentiate Miguel Torres.—Copy of the original which appears on pages 2655 over to 2658 of my public protocol for the present year, to which I refer. At the request of the parties I issue this first copy for delivery to the purchaser, signed and sealed by me in Manila, the 14 day of December of the year 1882. Seal—Licenciate Miguel Torres.—Fees one peso ans five cents. Numbers 16 and 17.

The parcel to which this instrument refers forms part of
71 the Hacienda de San Luis y la Concepción, recorded in volume one of Cauayan, 11th archive, folio 118, estate numbered seventy five, and provisional volume two of Angadanan, archive 1, folio 7, property numbered 182, both first inscriptions. Ilagan, September 17, 1898. Licentiate Juan García Rodrigo.—A seal reading "Property Register of la Isabela."

The foregoing agrees with the original which has been taken from this record, to which I refer.

Ilagan, December 23, 1902.

FRANCISCO TACCAP,
Escribano del Juzgado.

72 Number 6.

Joaquin Chinchilla y Diez de Oñate, General Intendent of the Treasury Department of these Islands.—Whereas Valentin Biscarra has denounced the piece of public land situated at Cornayan, within the town of Cauayan, province of Isabela de Luzon, the superficial area of which is 99 hectareas, 79 areas and 20 centiareas or 35 quiñones and 7 balitas; being bounded or the north by public lands denounced by Potenciano de los Santos, on the east by the Cornayan estero, on the south by public lands denounced by Ludovico Biscarra, and on the west by the forest of the ranch Carabatan; and whereas, by decree of this office of June 30th last the applicant was awarded the ownership of the land referred to upon payment of its value, the fees of "media-annata", and other proper fees required by the Laws in force, and having paid me the sum of $199.58 for the total value of the land, and the sum of $8.98 for the fees of "media annata" and dispensation of the royal confirmation, I issue this title, so that by virtue thereof the said Valentin Biscarra may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form. Done in Manila the 20th of October, in the year one thousand eight hundred and eighty two.—Joaquín Chinchilla—The Central Administrator of government Monopolies—Francisco Calvo Muñoz—Signature fees, five pesos—See the note on the back—A seal which reads "General Intendence of the Public Treasury of the Philippines"—Title deed to a piece of public land situated at Cornayan, within the town of Cauayan in the
73 province of Isabela de Luzon, issued in favor of Valentin Biscarra by decree of the General Intendence of the Treasury of the 11th inst., in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay its value when the whereabouts of the document and the seals which the petitioner delivered to the Sub-delegation of the Treasury Department in the province referred to are discovered.—With the corresponding effects this is so ordered,

in compliance with the said decree. Manila, October 20, 1882.—Calvo.—A seal reading "Central Administion of Government Monopolies. Philippine Islands."—Recorded in the Central Administration of Government Monopolies. Manila, the twenty sixth of October, one thousand eight hundred and eighty two.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."

Number Eight hundred and twenty-nine. In Manila the twenty-sixth of December, one thousand eight hundred and eighty-two, before me, Miguel Torres, Licentiate of Law and notary public of this city, and the witnesses hereinafter named, personally appeared Valentin Biscarra, of age, a resident of the town of Malibay, this province, a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the execution of this public instrument of sale, which I believe to be true, nothing to the contrary being known to me, he deposed and said: First: Property. That he is the owner of a piece of public land situated at Cornayan, in the town of Cauayan, Province of Isabela de Luzon, the area of which is 99 hectareas, 79 areas and 20 centiare-s or 35 quiños and 7 balitas; being bounded on the north by public lands denounced by Potenciana de los Santos, on
74 the east by the Cornayan estero, on the south by public lands denounced by Ludovico Biscarra, and on the west by the forest of the ranch Carabatan; Second: Title. That the said land was purchased by the deponent from the royal Treasury for the sum of $199.58 for the total value of the land, and $8.98 for the fees of "media annata" and the dispensation of the royal confirmation, which total sum of $208.56, was paid by him as shown by the deed issued in his favor by the Excellency the Intendent Joaquín Chinchilla, on the twentieth of October last, which was exhibited to me and to which I refer, as does the deponent; and Third: Sale. That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vecinity, for the sum of $209.00 and now carries the agre-ment into effect and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses and easements, to Antonio Pascual Casal for the sum $209.00, the receipt of which he acknowledged hereby, in current coin, to his entire satisfaction; as to which receipt, the same being true and not having been in my presence, he waives the exception of the money not paid in cash and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal the ownership, rights and actions which he has or may have to the said land, authorizing him to take possession thereof and to dispose of it at his will as of a thing lawfully acquired, to which end he now delivers him the title deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus effecting the symbolic delivery of the said land, which he declares to be free of all incumbrances, binding himself to warrant and defend the same at all times.—Acceptance. The purchaser, Antonio Pascual Casal, of age, a pro-

prietor and a resident of this vecinity, personally known to
75 me, to which I certify, and, I being present, said: That he accepts the sale made to him by this instrument in the precise terms in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of this acceptance.

Finally, both parties declare that no fraud or lesion of any kind been present in this contract, that the two hundred and nine pesos which are the consideration of this sale are a just consideration, and that if the land should be worth more the excess, whether little or great, is made a matter of mutual donation perfert and irrevocable, with an express waiver of the law with respect to contracts in which there may be lesion in more or less than one-half of the just price, and that the four years fixed by the law for the exercise of the action is likewise waived, it being the will of the parties that from this moment this contract shall be regarded as completed and consum-ated, upon the guarantee of all their property, present and future. Se declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, and personally known to me; and all having been informed of their right to read this document for themselves; after which all sig.d and ratified the foregoing, to which I certify.—Valentin Bizcarra—Antonio P. Casal—Ambrosio Aquino—Mariano Palacio—In the presence of Licentiate Miguel Torres—Copy of the original which appears on pages 2788 over to 2790 of my public protocol for the present year, to which I refer. At the request of the parties I issue this first copy for delivery to the purchaser, signed and sealed by me in Manila, the 26 day of December of the year one thousand eight hundred eighty two. Seal—Licentiate Miguel Torres.—Fees one peso and five cents. Numbers 16 and 17.

76 The parcel to which this instrument refers forms part of the Hacienda de San Luis y la Concepcion, recorded in volume one of Cauayan, 11th archive, folio 118, estate numbered seventy five, and provisional volume two of Angadanan, archive 1, folio 7, property numbered 182, both first inscripcions. Ilagan, September 17, 1898. Licentiate Juan García Rodrigo.—A seal reading "Property Register of la Isabela."

The foregoing agrees with the original which has been taken from this record, to which I refer.

Ilagan, December 23, 1902.

FRANCISCO TACCAD,
Escribano del Juzgado.

77 Number 7.

Joaquin Chinchilla y Diez de Oñate, General Intendent of the Treasury Department of these Islands.—Whereas Ludovico Bizcarra ha- denounced the piece of public land situated at Cornayan, within the town of Cauayan, province of Isabela de Luzon, the superficial area of which is 99 hectareas and 65 areas or 35 quiñones, 6 balitas, 6 loanes and 35 square brazas, being bounded on the north by lands

denounced by Valentín Bizcarra, on the east by the Cornayan estero, on the south by lands denounced by Bonifacio Bizcarra, and on the west by forest of the ranch Carabatan; and whereas, by decree of this office of June 30th last the applicant was awarded the ownership of the land referred to upon payment of its value, the fees of "media annata," and other proper fees required by the laws in force, and having paid me the sum of $199.30 for the total value of the land, and the sum of $8.96 6/8 for the fees of "media annata" and dispensation of the royal confirmation, I issue this title, so that by virtue thereof the said Ludovico Bizcarra may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the p-litico-military government of Isabela de Luzon under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form. Done in Manila the 20th of October, in the year one thousand eight hundred an eighty two.—Joaquín Chinchilla—The Central Administrator of government Monopolies—Francisco Calvo Muñoz—Signature fees, five pesos—See the note on the back—A seal which reads "General Intendence of the Public Treasury of the Philip-
78 pines"—Title deed to a piece of public land situated at Cornayan, within the town of Cauayan, in the province of Isabela de Luzon, issued in favor of Ludovico Bizcarra by decree of the General Intendence of the Treasury of the 11th inst., in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay its value when the whereabouts of the document and the seals which the petitioner delivered to the Sub-delegation of the Treasury Department in the province referred to are discovered.—With the corresponding effects this is so ordered, in compliance with the said decree. Manila, October 20, 1882.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."—Recorded in the Central Administration of Government Monopolies. Manila, the twenty sixth of October, one thousand eight hundred and eighty two.—Calvo.—A seal reading "Central Administration of Government Monopolies. Philippine Islands."

Numbered eight hundred and thirty-six. In Manila the twenty-eighth of December, one thousand eight hundred and eighty-two, before me, Miguel Torres, Licentiate of Law and notary public of this city, and the witnesses hereinafter named, personally appeared Ludovico Bizcarra, of age, a resident of the town of Malibay, this province, a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the execution of this public instrument of sale, which I believe to be true, nothing to the contrary being known to me, he deposed and said: First. Property.—That he is the owner of a piece of public land situated at Cornayan, in the town of Cauayan, Province of Isa-
bela de Luzon, the area of which is 99 hectareas and 65 areas
79 or 35 quiñones, 6 balitas, 6 loanes and 35 square brazas, being bounded on the north by lands denounced by Valentin Bizcarra, on the east by the Cornayan estero, on the south by lands

denounced by Bonifacio Bizcarra, and on the west by forest of the ranch Carabatan. Second: Title.—That the said land was purchased by the deponent from the Royal Treasury for the sum of $199.30, for the total value of the land, and $8.96 6/8 for the fees of "media annata" and the dispensation of the royal confirmation, which total sum of $208.26 6/8 was paid by him as shown by the deed issued in his favor by his Excellency the Intendent Joaquín Chinchilla, on the twentieth of October last, which was exhibited to me and to which I refer, as does the deponent; and Third: Sale.—That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vicinity, for the sum of $209.00 and now carries the agreement into effect and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses and easements, to Antonio Pascual Casal for the sum of $209.00, the receipt of which he acknowledged hereby, in current coin, to his entire satisfaction; as to which receipt, the same being true and not having been made in my presence, he waives the exception of the money not paid in cash and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal the ownership, rights and actions which he has or may have to the said land, authorizing him to take possession thereof and to dispose of it at his will as of a thing lawfully acquired, to which end he now delivers him the title deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus effecting the symbolic delivery of the said land, which he declares to be free of all incumbrances, binding himself to warrant and defend the
80 same at all times.—Acceptance.—The purchaser, Antonio Pascual Casal, of age, a proprietor and a resident of this vecinity, personally known to me, to which I certify, and, I being present, said: That he accepts the sale made to him by this instrument in the precise terms in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of this acceptance.

Finnally, both parties declare that no fraud or lesion of any kind has been present in this contract, that the two hundred and nine pesos which are the consideration of this sale are a just consideration, and that if the land should be worth more the excess, whether little or great, is made a matter of mutual donation, perfect and irrevocable, with an express waiver of the law with respect to contracts in which there may be lesion in more or less than one half of the just price, and that the four years fixed by the law for the exercise of the action is likewise waived, it being the will of the parties that from this moment this contract shall be regarded as completed and consum-ated, upon the guarantee of all their property, present and future. So declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, and personally known to me; and all having been informed of their right to read this document for themselves; after which all signed and ratified the foregoing, to which I certify.—Ludovico Bizcarra—Antonio P. Casal—Ambrosio Aquino—Mariano Palacio—In

the presence of Licentiate Miguel Torres.—Copy of the original which appears on pages 2804 over to 2806 of my public protocol for the present year, to which I refer. At the request of the parties I issue this first copy for delivery to the purchaser, signed and sealed
by me in Manila, the 28th day of December of the year one
81 thousand eight hundred and eighty two. Seal—Licentiate
Miguel Torres.—Fees one peso and five cents. Numbers 16 and 17.

The parcel to which this instrument refers form- part of the Hacienda de San Luis and La Concepcion, recorded in volume one of Cauayan, 11th archive, folio 118, estate numbered 75, and provisional volume two of Angadanan, archive 1, folio 7, prope-ty numbered 182, both first inscriptions. Ilagan, September 17, 1898. Licentiate Juan García Rodrigo.—A seal reading "Property Register of la Isabela."

The foregoing agrees with the original which has been taken from this record, to which I refer.

Ilagan, December 23, 1902.

FRANCISCO TACCAD,
Clerk of the Court.

82 Number 8.

Number four hundred and thirty six. In Manila, the thirty first day of October, in the year one thousand eight hundred and eighty seven. I, Ricardo Saavedra y Siguenza, notary public of this city, domiciled in the same, certify that Jose Clavet has appeared before me and has required me to draw up a notarial instrument concerning the declaration of ownership of certain agricultural estates which, in the representative capacity which will hereafter be mentioned, he desires to execute. The said Clavet acts in representation of the testamentary estate of his Excellency Antonio Pascual Casal and of the minors Eduardo, Dolores and Natalia Pascual Casal y Ochoa, as their curator, which double representative capacity he accredits with the respective transcripts of the appointments to the said offices, which he exhibits to me and which will be inserted hereinafter. And because I know him and he assures me that he has the necessary legal capacity, which appears to me to be true, and exhibited to me his personal cedula issued in the present fiscal year by the administration of the Public Treasury of this province, under number six hundred and fifty seven, of the fourth class, which shows that he is of age and a resident of this capital, I proceed to draw up this deed, in accordance with the instructions which he has given me.

First. His Excellency Antonio Pascual Casal entered into a partnership with Ernesto Polack for the purpose of commencing and
operating a tobacco business in these Islands, and which has
83 been released from a Government Monopoly, upon the con-
dition that the former was to have a fourth interest in the business and the latter the remaining three-fourth-, and that Señor

Casal was to acquire lands in the province of Isabela suitable for the cultivation of tobacco. When the Compañia General de Tabacos de Filipinas was organized Señor Polack conveyed to the latter his interest, as he had started the business for this purpose, and shortly afterwards Señor Casal sold to the same Company his share of the business, as appears from the contract recorded in the document dated August first, one thousand eight hundred and eighty-two, in which it was stipulated that the Company was to pay Señor Casal two hundred thousand pesos in cash and one thousand shares of the capital stock of the company; that Señor Casal acquired the possession and ownership of the nine thousand two hundred and thirty hectareas of land in la Isabela obtained from the Government through agents of the said Casal, he paying the expenses caused by the acquisition of the said land; and that the amount which the Company owed Señor Casal for the grant was to be paid at the time of the execution of the deeds to the said lands.

2. That the Company intended to use the said nine thousand two hundred and thirty hectareas of land for the purpose of organizing, as it did organize, five agricultural estates for the cultivation of tobacco, which were named respectively "San Antonio," "San Rafael," "Santa Isabel," "San Luis" and "La Concepcion," the situation, are- and boundaries of which have been recorded in detail in plans made for the purpose, and Señor Casal having acquired
84 the land with which were organized the haciendas denominated "Santa Isabel," "San Antonio" and "San Rafael," on the eighteenth and twenty-third of December of the year one thousand eight hundred and eighty three, he executed notarial instruments before Miguel Torres, a notary public of this city, conveying to the Compañia General de Tabacos the ownership of the said lands.

Third. The transfer of the lands of the two remaining estates, "San Luis" and "La Concepcion," was not effected because the deeds corresponding to the various parcels had not been issued and the transfer had not been effected by the various denouncers of the other parcels, who had acted in their own names but by order and for the account of Señor Casal. While things were in this condition Señor Casal died, and he, in his will executed on the fifth of January, one thousand eight hundred and eighty four, before the said notary Señor Torres, directed that the agreement with the Company be carried out, all of which appears from the fifth clause of the said will, which is hereinafter inserted as follows:

"Fifth." "I do not remember that I have any indebtedness whatever, but if any indebtedness should appear and be proven, I direct that it shall be paid. For the necessary clearness and to ease my conscience I should, however make the following explanations. First. That by private contract entered into with a representative of the Compañia General de Tabacos de Filipinas I conveyed
85 to the latter a portion of land situated in the province of la Isabela de Luzon for a certain consideration expressed in the said document, I having received part thereof on account and the said Company still owing me some ninety odd thousand pesos,

which will appear from the books of the Company. Second. That of this land which I have ceded to the Compañia General de Tabacos, which constitute four haciendas, I have executed a formal transfer of only two of them, to wit, the haciendas of Santa Isabel and of San Antonio and San Rafael, and therefore no conveyance has been yet made by public instrument of the lands constituting the haciendas of Cauayan and Angadanan, it being my will that in case my death should occur before this formality has been complied with it be immediately carried out by my executors or heirs, executing for that purpose an instrument of sale to the Tabacalera Company as to the two estates last named. Third. That in this business with the Tabacalera Company concerning the cession of the lands in la Isabela, my nephew, Jose Clavet, has an interest or participation, represented by a capital of twenty thousand pesos, which sum, I order, shall be returned to him as soon as the said Company pays the ninety thousand and odd dollars which it still owes as part of the consideration for the lands which I have sold it. Fourth. That I have in my possession the sum of ten thousand pesos which belong to my brother, Jose Casal, a resident of Velez, Malaga, which I order shall be paid to him immediately and out of the first funds
86 collected, as he lives on his income, and I order my executors and heirs to place this sum, until such time as my brother can dispose of it, in the Government Deposit to his order, and that the interest shall be sent to him punctually. Fifth. That I have in my name a block of three shares of the stock of the Canton Insurance Company, one of which belongs at the present time to P. W. Mein, the present agent of the Chartered Bank, it being my will that the necessary proceedings be taken to the end that the said Señor Mein may be able to dispose freely of his share as owner thereof without any impediment or delay."

The foregoing agrees literally with its original, to which I refer.

Fourth. In consequence, Señor Clavet, as executor of the testamentary estate, took the necessary action for the purpose of completing the acquisition of the lands of the haciendas of "San Luis y la Concepcion," and having obtained such acquisition about the end of last year, prepared to complete the formal transfer to the Company, but this was not done, because the Company undertook to obtain a rescis-ion of the conveyance agreed to with the late Señor Casal, upon the ground of lesion, these difficulties having been determined by a compromise made by Señor Clavet, as executor of the testamentary estate of Señor Casal, and curator of the heirs of the latter, and by His Excellency Lope Gisbert, as representative of the Compañia General de Tabacos de Filipinas, which compromise was recorded in the public instrument dated the thirteenth inst., executed before me, it being agreed that the Company would
87 pay only two hundred thousand dollars; that the estate was to lose the thousand original shares of stock; that the lands were to be property of the Company; that the said compromise was to be submitted for judicial approval, and that from the day following that on which the judicial authority was granted the parties

would proceed to carry out the compromise, Señor Clavet, on behalf of the estate, executing the necessary deed, in order that it might appear that the Company is the owner of the two parcels of land denominated "San Luis and la Concepcion," the Company paying to the said Clavet the sum of seventy-thousand eight hundred and seventy two pesos and eighty two and five eighths cents, which was found to be the balance due the estate on the consideration for the transfer.

Fifth. The necessary proceedings having been instituted in the Court of First Instance of Tondo concerning the necessity and utility of the above mentioned compromise, the same was approved by the following order:

Order.

Court of First Instance of the District of Tondo.

October 28th, One Thousand Eight Hundred and Eighty Seven.

Whereas, Jose Clavet, as executor of the will of His Excellency, the late Antonio Pascual Casal, and as *curator ad bona* of the minor children of the deceased, by name Eduardo, Natalia and Dolores Pascual Casal y Ochoa, on the twenty first of the present month presented the petition which appears on page thirteen, together with a public instrument of compromise which appears on folios 1 to 12,
88 stating that for the reasons above mentioned he entered into a compromise before Ricardo Saavedra, a notary public of this city, on the thirteenth day of the present month, with the legal representative of the Compañia General de Tabacos of these Islands, in the tenth clause of which it is provided that the agreement is to be subject to judicial approval, this being a necessary requisite for its validity, by reason of the fact that it concerns the interest of the minors above mentioned; that the grounds of the compromise are the prevention of litigation which, under the legal pretext of lesion, might be instituted by the Compañia General, and that the Company was determined to institute such litigation against the contract of cession which was the origin of the rights and obligations compromised, and that the compromise was therefore necessary for the purpose of avoiding the expense, annoyance and trouble of litigation; that the convenience and utility are shown by the seventy thousand eight hundred and sixty two pesos and eighty two cents which the said Compañia General de Tabacos undertakes to pay to the petitioner's wards as soon as the compromise is approved, which sum, in view of the minority of the said wards and the scarcety of coin in these Islands, may be regarded as more convenient and useful to their interests than another sum which, although larger, is nevertheless dependent upon the adventures and costly hazard of a suit, and therefore prayed that the investigation requested be conducted, and that if sufficient grounds be found the Court approve the said compromise; and whereas, it appearing that the said
89 investigation was conducted in accordance with an order appearing on folio 16 over, Señores Emilio Martin Bolaños,

Jose Moreno Lacalle and Jose Bermudez all testify that, having been informed of the antecedents and conditions of the compromise entered into between Jose Clavet, in the representative capacity in which he appears, and the legal representative of the Compañia General de Tabacos, they are of the belief that this compromise is necessary and convenient for the interest of the minor heirs of the late Antonio Pascual Casal (folios 17 over to 22 over, inclusive); and Whereas, it appearing that by the order on folio 23 over, it was directed that the opinion of three attorneys be received, and to that effect Señores Felipe Buencamino, Mariano Monroy and Modesto Naval were appointed, they being practicing attorneys at this bar, which attorneys gave an opinion to the effect that the compromise, for the reasons stated, was necessary and convenient for the interest of the minors Edurado, Natalia and Dolores Pascual Casal y Ochoa (folio 28); and Whereas, it appearing that the record was delivered to Catalino Ponce de Leon, guardian *ad litem* of the said minors, for examination, he filed his report, appearing on page 33, concurring in the request of Jose Clavet; Therefore, considering that from the investigation conducted the necessity and utility of the compromise in question appear to be sufficiently proven; and considering that in this proceeding all the requirements of the law of civil procedure
90 in Articles 1402, 1411, 1412, and 1413, applicable to the present case, have been complied with, his Honor, before me, the Clerk, said: That he should and did grant to Jose Clavet, *curator ad bona* of the minors Eduardo, Natalia and Dolores Pascual Casal, the authority he requests, for the purposes of the compromise in question, a copy of this order to be delivered to the said Clavet for the corresponding effects with regard to the said compromise. The said order was issued and signed by his Honor, to which I certify.—Rafael Soriano.—Pedro G. Enrico.—The foregoing agrees with its original on pages 35 to 37 over of the record of the voluntary proceedings instituted by Jose Clavet, testamentary executor of the late Antonio Pascual Casal and *curator ad bona* of the latter's minor children Eduardo, Natalia and Dolores Pascual Casal y Ochoa, concerning the necessity and utility of a compromise concerning the rights of the said minors with the Compañia General de Tabacos, to which I refer. And in compliance with the order inserted I have made this copy, witnesses to its conformity with its original being Genaro Teodoro and Alejandro Hernandez, present in my office in Tondo on the twenty eighth of October, one thousand eight hundred and eighty seven, to which I certify.—Pedro G. Enrico.—The foregoing is an exact and faithful copy of its original, to which I refer.

Sixth. The compromise entered into between the Compañia General de Tabacos de Filipinas and the testamentary estate of Señor Casal having been legalized, Jose Clavet, in accordance with
91 the agreement appearing in the eighth clause of the said compromise and the directions given by the late Señor Casal in the fifth clause of his will, by this instrument solemnly declares: That the lands composing the haciendas of "San Luis y la Concepcion" belong in fee simple to the said Company, and to this end states that the said haciendas are situated within the towns of

Cauayan and Angadanan, in the province of La Isabela de Luzon, in these Islands, and abut upon one another; that is, they form one continuous tract and are composed of sixty parcels or small lots, as this was the manner in which they were acquired from the State, all of which appears from the respective title deeds in the possession of the Compañia General de Tabacos; the lands comprising both haciendas measuring together two thousand nine hundred and two hectareas, sixty-one areas and seventy-eight centiareas, bounded on the north by the arrable lands of Joaquin de Guzman; on the northwest by public lands and by the ranchos Mabantad, Carabatan and Andarayan; on the west, throughout its whole length, by the Rio Grande de Cagayan; on the south by the said river and by public lands; and on the east by the Cornayan Estero and by public lands.—The situation, boundaries, and superficial area of the haciendas in question, as well as the names of the persons who denounced to the State the sixty parcels of which the haciendas are composed, appear in the plan of the said haciendas, of which plan a copy will be attached to the appendix of my protocol, and another will be attached to the copy of this instrument, so that it may be added to
92 the title deeds of the haciendas, which, as above stated, are in the possession of the Compañia General de Tabacos.—The title deeds to the sixty parcels of land which constitute the two haciendas in question stand, at the present time, in the name of the estate of Antonio Pascual Casal, as the denouncers of the parcels designated in the plan from Nos. 1 to 17, inclusive, 19, 30 to 43, inclusive, and 54 to 60 inclusive, have conveyed to Señor Casal, by public instruments, the titles which the State granted to them; the eleven parcels which are designated on the plan by numbers 18 to 29, inclusive, were awarded by the State at public auction to the said Jose Clavet, all of which appears from the public instruments executed by the Administrator of Revenues and Properties of these Islands on the first, second and fourth of June, one thousand eight hundred and eighty six, respectively, before me as notary public for the Treasury Department; and the said remaining parcels appearing on the said plan under Nos. 44 to 53 inclusive were conveyed by the denouncers who took title thereto from the State to the said Jose Clavet by public instruments executed before the Judge of First Instance of the Province of Cagayan on the sixteenth of October, one thousand eight hundred and eighty-six. It is to be observed that although in the said instruments of conveyance of the twenty-one parcels numbered 18, 20 to 29 and 44 to 53, no mention is made of the fact that the conveyances and awards were made in favor of Señor Clavet, not in his own name, but as executor
93 of the testamentary estate of Señor Casal, and therefore in favor of the said estate. It is true that this oversight was due to an involuntary omission, and that Señor Clavet took the said titles for the testamentary estate, as he, the said Clavet, hereby solemnly declares, and therefore makes the necessary rectification and waives all rights which might appear to exist in his favor by reason of the fact that the adjudications in question appear to have been in his name.

Seventh. By virtue of the facts stated, Jose Clavet, in the name of the testamentary estate of his Excellency Antonio Pascual Casal, deceased, and as executor thereof, and on behalf of the minors Eduardo, Dolores and Natalia Pascual Casal y Ochoa, solemnly declares that the land constituting the agricultural haciendas denominated "San Luis y la Concepcion," described in the preceding clause, belong in fee simple to the Compañia General de Tabacos de Filipinas, as, although the acquisition of the said lands appears to have been made by other persons and for Señor Casal, as above stated, they were transferred to the Company by virtue of the grant of the said Casal in favor of the said Company, in a document dated the first of August, one thousand eight hundred and eighty two, and by virtue of the agreement recorded in the said instrument of compromise dated the thirteenth inst. Wherefore Señor Clavet, in the double representative capacity in which he appears, grants and conveys all rights and actions which do or might pertain to the testamentary estate and to the persons interested thereon in and to the haciendas of San Luis and la Concepcion to the Compañia General de Tabacos de Filipinas, which he acknowledges as *and* sole owner of the
94 haciendas, together with all rights and accessories thereto. The effects of this declaration and those of the conveyance of the fee of the lands are to be retroactive to the date on which the agreement was perfected, to wit, the first of August, one thousand eight hundred and eighty two, or to the date on which the ownership of the land was acquired according to law. Upon these terms Señor Clavet executes this instrument, the validity and irrevocability of which he guarantees with all the property which he represents. The documents which have been mentioned above are of the following tenor:—Antonio Custodio, assistant clerk of the Court of Tondo. I certify that in the proceedings concerning the appointment of a guardian and curator for the minors Eduardo, Dolores and Natalia Pascual Casal y Ochoa, instituted by Jose Clavet, shown on folios 19 and 20, an entry of the following tenor appears:—In the Court of First Instance of the District of Tondo, the tenth of October, one thousand eight hundred and eighty seven, before me, Rafael Soriano y Bernar, Alcalde mayor and Judge of First Instance of this District, and the undersigned clerk, personally appeared Jose Clavet, a native of Spain and a resident of this capital, married, of age, and in the full exercise of his civil rights, guardian and curator duly appointed for the minors Eduardo, Dolores and Natalia Pascual Casal y Ochoa, children of his Excellency the late Antonio Pascual Casal and Maria Perez de Tagle, and having been first duly sworn to faithfully
95 perform the duties of his office, the said Judge, before me, the Clerk, said that he should and thereby did qualify the said Señor Clavet for the offices of guardian and curator of the said minors, conferring on him all the powers inherent in the said office and necessary in law in order that he may administer and control all rights, properties and actions pertaining or which may pertain hereafter to the said minors by any title, and that he may defend them in all suits and causes, civil or criminal, which they have or may have with any person, partnership or corporation, and in any court or

courts, until its final decision thereof taking the counsel of lawyers or conscientious and intelligent persons learned in science whenever his own learning shall be insufficient; likewise endeavoring to augment the property and to guard the interests of his wards in all affairs and transactions; and for the validity of the said appointments His Honor interposes his judicial authority for the legal effects, and directs that a copy of this order be given the parties in interest as they may require. The proceeding is thus terminated, and the said Señor Clavet signs, after his Honor, to which I certify.—Rafael Soriano.—Jose Clavet.—Antonio Custodio?—In compliance with the provisions of the foregoing order I issue this copy in my office in Tondo the tenth of October, one thousand eight hundred and eighty seven.—Antonio Custodio.—Antonio Custodio, assistant Clerk of Miguel Torres in the Court of the District of Tondo. I certify that in
96 the record of the proceedings instituted by Jose Clavet concerning his qualification for the office of executor of the estate of his Excellency Antonio Pascual Casal, appears an entry of the following tenor: In the Court Room of the Court of the District of Tondo, the twenty-ninth of August, one thousand eight hundred and eighty four, before the Judge, Jose Fernandez Giner, and the undersigned clerk, personally appeared Jose Clavet, a native of Spain, of age, and a resident of this capital, and stated that he had been appointed an executor jointly and severally with his aunt Maria Ochoa, wife of his Excellency the late Antonio Pascual Casal, without bond, as appears from clause 8 of the will executed by the latter, and having accepted the office, it was directed by an order entered upon the petition presented by him that upon taking the necessary oath he be qualified for the office, and that in compliance therewith he swears by God our Lord and upon the sign of the cross to well and religiously discharge the office of executor to which he is appointed, and binds himself to religiously do and perform all things directed by the testator in his last will and testament, and undertakes to administer with the zeal and efficiency of a good father of a family the said office, to the end of obtaining an increase in the property which he administers and which may come into his possession, for the benefit of the heirs and other persons interested in the estate, leasing the buildings and other real property at advantageous rentals, collecting credits, taking such action as may be necessary and indispensable for
97 the good administration of the property, which has been commended to him for its preservation and custody, executing receipts, acquittances and statements, and doing all things which may be necessary for the benefit of the property under his administration in the performance of the directions of the testator as well as in accordance with the duties of an executor, to which end he will take the advice of lawyers or persons of learning and conscience, who may advise him, to the end that the property of the estate to be administered by him may not suffer prejudice or detriment, and he binds himself to give an accurate account of the same whenever called upon; and for the performance of all the duties above stated he binds himself with all his property, present and future, under the sanction of his oath.—In view of the foregoing the Judge said that

he should and did qualify the said Jose Clavet as executor, giving him ample power necessary in law to the end that he may freely administer the property of the said estate and defend its rights in all suits pending or which may hereafter be instituted, availing himself of all legal remedies with power to appoint attorneys, substitute others for such appointees, or revoke the appointments whenever deemed necessary by him, and for the purpose of making all things which may be done valid and binding his Honor interposes his authority and judicial power, directing that such transcript or transcripts of this order as may be asked for be issued. Thereupon the said
98 Clavet affirmed and ratified the same, after having read its contents, and signed, after his Honor, to which I certify.—Jose Fernandez Giner.—Antonio Custodio.—The foregoing agrees with its original, which appears in the record of proceedings above mentioned, and to which I refer. And at the request of the executor, Señor Clavet, I issue this transcript on this sheet of stamped paper of the second class corresponding to the present year, in Tondo in my office, the twenty ninth day of August, one thousand eight hundred and eighty four, to which I certify.—Antonio Custodio.—The preceding copies agree exactly and literally with their originals, to which I refer. I also certify that after this instrument was written the said Jose Clavet read it all, and ratified the same in one act and in my presence as well as that of the attesting witnesses, who assured me that they were not disqualified to act as such, their names being Mariano Palacio and Demetrio Gonzaga, of age, residents of this city, and who also read the instrument. I certify that I know the said Clavet and the witnesses, and finally that all of them signed the instrument together with me.—Jose Clavet.—Rubic.—Mariano Palacio.—Demetrio Gonzaga.—Rubric.—In my presence Ricardo Saavedra.—Rubric.—The foregoing is a copy of its original on folios 1797 to 1815 of my protocol corresponding to the present year, to which I refer. At the instance of the grantee and for the purpose of delivering the same to the Compañia General de Tabacos de Filipinas, I issue this first copy on one sheet of paper of the highest class
99 and seven sheets of common paper, all stamped, to the first of which are attached stamps to the value of twelve pesos and to the others stamps to the value of twenty five cents for each one, in accordance with the new law regulating the use of stamped paper, which copy I sign, seal and rubricate in Manila the date of its execution, the fact of the making of which copy I have noted on the margin of its original, to which I certify.—Seal.—Ricardo Saavedra.—Fees, six pesos and sixty-five cents. Articles 16 and 17 of the tariff.—A seal reading, "Nihil prius fide."—Notary's office of Ricardo Saavedra.—Manila.

The inscription of the preceding document is not admitted by reason of the fact that it is defective with respect to the personality of the corporation mentioned therein, and this being a defect which does not appear to be subject to correction, no preventive annotation can be made thereof.—Ilagan, the ninth day of March, one thousand eight hundred and ninety five.—Juan Conde.—A seal reading "Registry of Property"—Isabela—This document is recorded in

the first volume of the municipality of Cauayan, the eleventh volume of archives of this Registry, folio one hundred and eighteen, property numbered seventy five, first inscription.—And in the second provisional volume of the municipity of Andaganan, first provisional volume of the archive, seventh folio, property numbered one hundred and eighty two, first inscription.—Ilagan, September 17th, 1898.—Licenciate Juan Garcia Rodrigo.—Fees, sixty-
100 five pesos and ninety-two cents. Numbers two, three and seven of the tariff; Registry of Property of la Isabela.

The foregoing agrees with its original, which has been taken from this record and to which I refer.

Ilagan, December 23, 1902.

FRANCISCO TACCAD, *Clerk.*

Number 9.

Number four hundred and fifty-six. Instrument of amplification of the former instruments executed by his Excellency Antonio Pascual Casal, his testamentary estate, and the Compañia General de Tabacos de Filipinas, concerning lands in the province of la Isabela de Luzon, and of their sale as herein expressed, executed by Jose Clavet, as executor of the said estate, and his Excellency Lope Gisbert, as the representative of the Company.—In Manila the twenty-first day of November, one thousand eight hundred and eighty-seven.—I, Ricardo Saavedra y Siguenza, notary public of this city with domicile in the same, certify: That Jose Clavat and his Excellency Lope Gisbert personally appeared before me and have required me to draw up and authorize a notarial instrument of amplification and of a sale of the lands for a certain case. Jose Clavet appears and acts on behalf of the minors Eduardo, Dolores and Natalia Pascual Casal y Ochoa, as their curator, and as executor of the testamentary estate of the late Antonio Pascual Casal. His Excellency Señor Gisbert appears on behalf of the Compañia General de Tabacos de Filipinas, as general manager thereof. The representative capacity of these gentlemen is accredited by them by
101 the exhibition of the documents hereinafter inserted.

Antonio Custodio, assistant Clerk of Miguel Torres in the Court of the District of Tondo. I certify that in the record of the proceedings instituted by Jose Clavet concerning his qualification for the office of executor of the estate of his Excellency Antonio Pascual Casal, appears an entry of the following tenor: In the Court Room of the Court of the District of Tondo, the twenty-ninth of August, one thousand eight hundred and eighty four, before the Judge, José Fernandez Giner, and the undersigned clerk, personally appeared Jose Clavet, a native of Spain, of age, and a resident of this capital, and stated that he had been appointed an executor jointly and severally with his aunt María Ochoa, wife of his Excellency the late Antonio Pascual Casal, without bond, as appears from clause 8 of the will executed by the latter, and having accepted the office, it was directed by an order entered upon the petition presented by him that upon taking the necessary oath he be qualified

for the office, and that in compliance therewith he swears by God our Lord and upon the sign of the cross to well and faithfully discharge the office of executor to which he is appointed, and binds himself to religiously do and perform all things directed by the testator in his last will and testament, and undertakes to administer with zeal and efficiency of a good father of a family the said office, to the end of obtaining an increase in the property which he administers and which may come into his possession, for the benefit of the heirs and other persons interested in the estate, leasing the buildings and other real property at advantageous rentals, collecting credits, taking such action as may be necessary and indispensable for the good administration of the property, which has been commended to him for its preservation and custody, executing
102 receipts, acquittances and statements, and doing all things which may be necessary for the benefit of the property under his administration and in the performance of the directions of the testator as well as in accordance with the duties of an executor, to which end he will take the advice of lawyers or persons of learning and conscience, who may advise him, to the end that the property of the estate to be administered by him may not suffer prejudice or detriment, and he binds himself to give an accurate account of the same whenever called upon; and for the performance of all duties above stated he binds himself with all his property, present and future, under the sanction of his oath.—In view of the foregoing the Judge said that he should and did qualify the said Jose Clavet as executor, giving him a-ple power necessary in law to the end that he may freely administer the property of the said estate and defend its rights in all suits pending or which may hereafter be instituted availing himself of all legal remedies with power to appoint attorneys, substitute other for such appointees, or revoke the appointments whenever deemed necessary by him, and for the purpose of making all things may be done valid and binding his Honor interposes his authority and judicial power, directing that such transcript or transcripts of this order as may be asked for be issued. Thereupon the said Clavet affirmed and ratified the same, after having read its contents, and signed, after his Honor, to which I certify.—Jose Fernandez Giner.—Antonio Custodio.—The foregoing agrees with its original, which appears in the record of procedings above mentioned, and to which I refer. And at the request of the executor Señor Clavet, I issue this transcript on this sheet of stamped paper of the second class corresponding to the present year,
103 in Tondo in my office, the twenty ninth day of August, one thousand eight hundred and eighty four, to which I certify. —Antonio Custodio.—Antonio Çustodio, assistant clerk of the Court of Tondo. I certify that in the proceedings concerning the appointment of a guardian and curator for the minors Eduardo, Dolores and Natalia Pascual Casal y Ochoa, instituted by Jose Clavet, shown on folios 19 and 20, an entry of the following tenor appears:—In the Court of First Instance of the District of Tondo, the tenth of October, one thousand eight hundred and eighty seven, before me, Rafael Soriano y Bernar, Alcalde mayor and Judge of First Instance

of this District, and the undersigned clerk, personally appeared Jose Clavet, a native of Spain and a resident of this capital, married, of age, and in the full exercise of his civil rights, guardian and curator duly appointed for the minors Eduardo, Dolores and Natalia Pascual Casal y Ochoa, children of his Excellency the late Antonio Pascual Casal and Maria Perez de Tagle, and having been first duly sworn to faithfully perform the duties of this office, the said Judge, before me, the Clerk, said that he should and thereby did qualify the said Señor Clavet for the offices of guardian and curator of the said minors, conferring on him all the powers inherent in the said office and necessary in law in order that he may administer and controll all rights, properties and actions pertaining or which may pertain hereafter to the said minors by any title, and that he may defend them in all suits and causes, civil or criminal, which they have or may have with any person, partnership or corporation, and in any court or courts, until its final decision thereof, taking the counsel of lawyers or conscientious and intelligent persons learned in science whenever his own learning shall be insufficient; likewise endeavoring to augment the property and to guard the
104 interests of his wards in all affairs and transactions; and for the validity of the said appointment his Honor interposes his judicial authority for the legal effects, and directs that a copy of this order be given the parties in interest as they may require. The proceeding is thus terminated, and the said Señor Clavet signs, after his Honor, to which I certify.—Rafael Soriano—Jose Clavet—Antonio Custodio—In compliance with the provisions of the foregoing order I issue this copy in my office in Tondo the tenth of October, one thousand eight hundred and eighty seven.—Antonio Custodio. A seal which reads: Twentieth class: year 1883: 75 cents of peseta.

Number 0612890. I, Aristides de Artiñano y Zuricaldy, Honorary Superior Chief of the Civil Administration, Attorney of the Illustrious Colleges of Madrid, Barcelona and Bilbao, as Secretary of the Compañia General de Tabacos de Filipinas, hereby certify, that the council of Administration, at a meeting held on the seventeenth inst., and on motion of the Executive Commission, appointed his Excellency Lope Gisbert y Garcia Tornell General manager of the Company in the Philippine Islands, with the duties and powers vested in that office by the by-laws and regulations of the Company.—In witness whereof, and in order that his Excellency the said Lope Gisbert y Garcia Tornell, may use the same as a credential in his dealings with the authorities, Courts, offices and all classes of corporations of the Philippine Archipelago, I issue these presents, by order and with the consent of his Excellency the Vice-President of the Council of Administration. Sealed with the seal of the Company in Barcelona this eighteenth day of September, one thousand eight hundred and eighty three.—Aristides de Artiñano.—
105 Countersigned by the Vice-President.—Isidro Ponz.—A seal reading "Compañia General de Tabacos de Filipinas."—Barcelona, September 18, 1883. A seal reading, "6th class, the year 1883; ten pesetas."—Luis Gonzago Soler y Pla, notary public of

the Illustrious College of the territory of Barcelona, residing in the capital.—I certify that Señores Isidro Pons and Aristides de Artiñano, by whom the preceding document has been respectively issued, and vised, are respectively the Vice-President of the Council of Administration and the General Secretary, pro tem, of the Compañia General de Tabacos de Filipinas, and that their signatures and rubrics are similar to those appearing on the document and that they are apparently in their own proper handwriting, and that the seal which appears on the margin of the said document is the seal used by the said Company, nothing to the contrary being known to me.—Barcelona, the nineteenth day of September, one thousand eight hundred and eighty-three.—A signature "Luis G. Soler." A seal reading "Notary's office of Luis Gonzaga Soler, Barcelona."—The undersigned, notaries public of the Illustrious College of the territory of Barcelona, residing in the capital, hereby authenticate this signature, seal and rubric above appearing of the notary public Luis Soler Gonzaga y Pla.—Barcelona, September 20, one thousand eight hundred and eighty-three.—A signature "Manuel de Larates y Calaben." A seal of the notarial College of the Territory of Barcelona of the value of three pesetas.—The foregoing copy

106 literally agrees with its original, to which I refer.—Whereas, I am acquainted with the parties above mentioned, and they assure me that they have the necessary legal capacity, which I believe to be true, and exhibited to me their personal cedulas issued for the present fiscal year by the Treasury Department of this province under the numbers six hundred and fifty-seven and one hundred and thirty-two, of the fourth and first classes, respectively, in which it is shown that they are of age and residents of this capital, the said instrument was drawn up in accordance with the instructions communicated to me by the said gentlemen.—In the instrument which the contracting parties executed before me on the thirteenth of October last, by which they recorded the compromise entered into between the Compañia General de Tabacos and the estate of his Excellency Antonio Pascual Casal, it was stipulated that when the said compromise should be judicially approved Jose Clavet, as executor, would execute another instrument declaring the ownership of the lands styled "San Luis y la Concepcion," to be vested in the company. This authority having been obtained, Señor Clavet executed the instrument referred to on October thirty-first, but as Señor Gisbert considers the terms used in the drafts of said instrument to be insufficient for the purpose thereof, they have agreed to execute another instrument in such terms as may be required by the nature of the facts, contracts and rights connected with the said lands. For this purpose the parties hereto declare;

107 First. Enersto Polack and Antonio Pascual Casal, as a result of official correspondence conducted between them, agreed to go into the tobacco business in these Islands as soon as the Government monopoly should cease, and it was agreed between them for this purpose that the latter should undertake to acquire public lands in the province of la Isabela suitable for the cultivation

of tobacco, and that Señor Polack was to have three-fourth parts of the business, and that Señor Casal was to have the remaining fourth part, under the obligation of each contributing to the expense in similar proportions.

Second. In consequence thereof Señor Pascual Casal undertook the necessary work for the acquisition of the said lands, selec g such lands as he considered adequate for the purpose of the e. .- prise, which lands had a superficial area of nine thousand two hundred and thirty hectareas, as appears from the plans prepared by his order. He employed agents to make the necessary application to the State for the conveyance to them of the said lands, and these proceedings were commenced in the respective Government offices in accordance with the law prevailing on the subject.

Third. When the preparatory work concerning the establishment of the business was in this condition the Compañia General de Tabacos de Filipinas was organized, and then Señor Polack conveyed to the latter his interest in the business, because he had instituted it for the said Company, and not for himself.

108 Fourth. It being to the interests of the Company to assume the entire possession, a proposition was made to Mr. Casal for a grant of his fourth part, and the proposition being agreeable to him he accepted it, and the grant was decided upon for the consideration, in the form and upon the conditions which appear from a document exhibited to me and which is of the following tenor: Compañia General de Tabacos de Filipinas.—General Administration.—Antonio P. Casal, a merchant and a resident of this city, and Andres Lopez de Vega, Brigadier General of Engineers, General Manager of the Compañia General de Tabacos de Filipinas in this Archipelago, declare, that the first, having received from Ernesto Polack instructions to commence the establishment of a tobacco business as a result of the decree releasing tobacco from the Government monopolies, and that he proposed to the latter the acquisition of the lands in la Isabela as a foundation for the said business.—That Señor Polack approved the idea, and authorized Señor Casal to acquire the lands, and told him that he would give him such participation in the business as he might desire to have, to which Señor Casal responded that he would take a fourth part, which was accepted by Señor Polack, and in consequence of this Señor Casal denounced through his agents various lands in la Isabela, and when the proper applications had been presented the Compañia General de Tabacos de Filipinas was organized, for which Company Señor Polack had started the business, the Com-

109 pany thereby becoming the owner of the three fourths part thereof, while Señor Casal continued to possess the remaining fourth part, with the obligation of contributing respectively an equal proportion of the expenses.—That the interests of the Company being such as to make it convenient for the entire business to belong to it, a proposition was made to Señor Casal for a grant of his fourth part, to which he acceded.—That for the purpose of making the necessary contract Lope Gisbert, special commissioner of the Council of the Company, under telegraphic authority from the President of

the said Council, has had several conferences with Señor Casal, the result of which has been the following agreement between them: 1. Señor Casal grants to the Compañia General de Tabacos de Filipinas his fourth part of the lands in la Isabela, he undertaking to pay the expenses which may be necessarily incurred for the purpose of obtaining the possession and ownership of the nine thousand two hundred and thirty hectareas of land which appear on the plans now in the possession of the Company, or of the land within the boundaries established, if there should be more than the amount mentioned above. 2. The Company will give Mr. Casal, in payment for the grant to be made by him and to meet the expenses mentioned in the preceding paragraph, two hundred thousand Dollars in cash, and also one thousand original shares of preferred stock. 3. The Company will assume the expenses which may be occasioned by the increase in the number of hectareas which, by order of Sr. Gisbert, have been made in the documents still pending at
110 Cauayan and Angadanan. 4. Señor Casal states that he has received through Señor Polack the sum of one hundred and five thousand, four hundred and twenty-five dollars and forty-four cents, which should be deducted from the two hundred thousand dollars mentioned in paragraph 2, and that therefore a balance remains in his favor of ninety four thousand five hundred and seventy-four dollars and fifty-six cents, which will be paid to him as soon as the corresponding deeds to the lands are executed. 5. The Company furthermore will pay Señor Casal, upon proper accounts supported by vouchers, all the expenses which the said Señor Casal may have incurred for the purpose of bringing settlers on the lands and preparing the same for cultivation, and by virtue of orders of the said special commissioner; and for the purpose of recording the agreement enetered into between the latter and the said Antonio Pascual Casal, this document has been drawn up, to serve as a voucher for both of the contracting parties, and as security for all the rights and obligations recorded therein, and in accordance with the provisions of the regulations of the Company this document is signed in triplicate by the parties in interest and the General Manager of the Company in Manila August first, 1882.—A. Lopez de Vega.—Antonio P. Casal.—The foregoing copy agrees literally with its original, to which I refer.

Fifth. Señor Casal, by virtue of the preceding contract,
111 assumed the obligation of incurring such expenses and taking such steps as might be necessary to obtain from the State the ownership and possession of the nine thousand two hundred and thirty hectareas of land denounced for the business, and continued to take the necessary steps to determine and end the proceedings instituted upon the denouncements made by his agents, and when the Government issued title deeds to them for the five thousand three hundred and eighty four hectareas, twenty nine areas and forty-eight centiareas of the said lands, the denouncing agents in whose names titles had been taken conveyed them to Señor Casal, and the latter executed two instruments, one on the eighteenth and the other on the twenty-third of December, one thousand eight hun-

dred and eighty three, before the notary public of Manila Manuel Torres, declaring therein that he sold the Company the said hectareas of land, which are the same which compose the agricultural estates which have been formed and denominated "Santa Isabel," "San Antonio" and "San Rafael."

Sixth. The proceedings on the denouncements with respect to the number of hectareas necessary to complete these continued within the limits of the land sold, and denouncements for the business in question were still pending when the death of Señor Casal occurred, and his estate discharged the obligation contracted by him, continuing to take the necessary steps until the title deeds were issued by the State and transferred and put in the name of Señor Casal, whereupon, when the representative of the estate undertook to execute a conveyance to the Company of three thousand nine-
112 hundred and fifty-six hectareas, twenty five areas and twenty-eight centiareas, which, it appears, the lands last denounced amount to, and to collect the balance of the price agreed upon for the services and the one-fourth interest in the lands, pertaining to the deceased, Señor Casal, the Company raised a question by claiming that the grants should be rescinded because of an enormous lesion in the consideration, but this question was settled by compromise entered into between the parties by an instrument dated October thi-teenth, last, upon the terms therein expressed, which compromise was submitted to a Judge of First Instance for judicial approval and the same obtained, as appears from the following transcript:

113 *Order.*

Court of First Instance of the District of Tondo.

October 28th, One Thousand Eight Hundred Eighty-seven.

Whereas, José Clavet, as executor of the will of His Excellency, the late Antonio Pascual Casal, and as curator *ad bona* of the minor children of the deceased, by name Eduardo, Natalia and Dolores Pascual Casal y Ochoa, on the twenty first of the present month presented the petition which appears on page thirteen, together with a public instrument of compromise which appears on folios 1 to 12, stating that for the reasons above mentioned he entered into a compromise before Ricardo Saavedra, a notary public of this city, on the thirteenth day of the present month, with the legal representative of the Compañia General de Tabacos of these Islands, in the tenth clause of which it is provided that the agreement is to be subject to judicial approval, this being a necessary requisite for its validity, by reason of the fact that it concerns the interest of the minors above mentioned; that the grounds of the compromise are the prevention of litigation which, under the legal pretext of enormous lesion, might be instituted by the Compañia General, and that the Company was determined to institute such litigation against the contract of cession which was the origin of the rights and obliga-

tions compromised, and that the compromise was therefore necessary for the purpose of avoiding the expense, annoyance and trouble of litigation; that the convenience and utility are shown by the seventy thousand eight hundred and sixty two pesos and eighty two cents which the said Compañia general de Tabacos undertakes to pay the petitioner's wards as soon as the compromise is approved, which sum, in view of the minority of the said wards and the
114 scarcety of coin in these Islands, may be regarded as more convenient and useful to their interests than another sum which, although larger, is nevertheless dependent upon the adventures and costly hazard of a suit, and therefore prayed that the investigation requested be conducted, and that if sufficient grounds be found the Court approve the said compromise; and Whereas, it appearing that the said investigation was conducted in accordance with an order appearing on folio 16 over, Señores Emilio Martin Bolaños, José Moreno Lacalle and José Bermudez all testify that, having been informed of the antecedents and conditions of the compromise entered into between José Clavet, in the representative capacity in which he appears, and the legal representative of the Compañia General de Tabacos, they are of the belief that this compromise is necessary and convenient for the interest of the minor heirs of the late Antonio Pascual Casal (folios 17 over to 22 over inclusive); and Whereas, it appearing that by the order on folio 23 over it was directed that the opinion of three attorneys be received, and to that effect Señores Felipe Buencamino, Mariano Monroy and Modesto Naval were appointed, they being practicing attorneys at this bar, which attorneys gave an opinion to the effect that the compromise, for the reasons stated, was necessary and convenient for the interest of the minors Edurado, Natalia and Dolores Pascual Casal y Ochoa (folio 28); and Whereas, it appearing that the record was delivered to Catalino Ponce de Leon, guardian *ad litem* of the said minors, for examination, he filed his report, appearing on page 33, concurring in the request of José Clavet; Therefore, considering that from the investigation conducted the necessity and utility of the compromise in question appear
115 to be sufficiently proven; and considering that in this proceeding all the requirements of the law of civil procedure in Articles 1402, 1412 and 1413, applicable to the present case, have been complied with, his Honor, before me, the Clerk, said: That he should and did grant to José Clavet, curator *ad bona* of the minors Edurado, Natalia and Dolores Pascual Casal, the authority he requests, for the purposes of the compromise in question, a copy of this order to be delivered to the said Clavet for the corresponding effects with regard to the said compromise. The said order was issued and signed by his Honor, to which I certify.—Rafael Soriano.—Pedro G. Enrico.—The foregoing agrees with its original on pages 35 to 37 over of the record of the voluntary proceedings instituted by Jose Clavet, testamentary executor of the late Antonio Pascual Casal and curator *ad bona* of the latter's minor children Eduardo, Natalia and Dolores Pascual Casal y Ochoa, concerning the necessity and utility

of a compromise concerning the rights of the said minors with the Compañia General de Tabacos, to which I refer. And in compliance with the order inserted I have made this copy, witnesses to its conformity with its original being Genaro Teodoro and Alejandro Hernandez, present in my office in Tondo on the twenty eighth of October, one thousand eight hundred and eighty seven, to which I certify.—Pedro G. Enrico.—The foregoing is an exact and faithful copy of its original, to which I refer.

116 Seventh. In consequence of the stipulation contained in clauses 8 and 9 of the contract of compromise contained in the document dated the thirty-first of October, hereinbefore set forth, Señor Clavet executed the instrument referred to above, declaring that the three thousand nine hundred and fifty-six hectareas, twenty five areas and twenty-eight centiareas remaining, and which constituted the lands denominated "San Luis y la Concepción," are the property of the Company.

Eighth. For the reasons above stated, his Excellency Lope Gisbert and Señor Jose Clavet, in their respective representative capacities, agree as follows: (*a*) That although the denouncement of the

117 nine thousand two hundred and thirty hectareas of land referred to was effected at the instance and expense of Antonio Pascual Casal, and the denouncers subsequently conveyed to the latter the title to the said lands granted them by the State, it is evident that Señor Casal was at no time the owner of all the said nine thousand two hundred and thirty hectareas, because by virtue of the contract made by him with Señor Polack he was only to have a fourth part thereof.—(*b*) That the deeds of sale of the five thousand three hundred and eighty four hectareas, twenty nine areas and forty-eight centiareas of the said land, executed by Señor Casal on the eighteenth and twenty-third of December, one thousand eight hundred and eighty three, are, therefore, a matter of form understood between the parties, the purpose of which was to transmit whatever title might have been vested in the said Casal by reason of the fourth part corresponding to him, and which he granted to the Company, and that as the said five thousand three hundred and eighty four hectareas, twenty-nine areas and forty eight centiareas are much greater than the proportion which in the total of nine-thousand two hundred and thirty hectareas of land would have corresponded to the said Señor Casal as his fourth part, it is evident that by virtue of the said two instruments of sale all the title of Casal to the whole of the said lands was conveyed to the said Company, wherefrom it is evident, also, that no right of ownership remains vested in the said Señor Casal with respect to the three thou-

118 sand nine hundred and fifty-six hectareas, twenty-five areas and twenty-eight centiareas of land, which, at his death, were still unrepresented by title deeds by reason of the fact that the denouncement proceedings had not yet been terminated. (*c*) That although, from the recitals in paragraphs *a* and *b*, and the recitals in the instrument of October thirty-first last, there can be no doubt that the three thousand nine hundred and fifty-six hectareas, twenty-

five areas and twenty-eight centiareas of land which constitute the estate known as "San Luis y la Concepcion," are the property of the Company known as the Compañia General de Tabacos de Filipinas, nevertheless, to the end that if, for any reason, it might be understood or appear that Señor Casal was really the owner of the said three thousand nine hundred and fifty-six hectareas, twenty-five areas and twenty-eight centiareas of land, Señor Jose Clavet in the representative capacity in which he appears declares that he sells to the Compañia General de Tabacos de Filipinas the said three thousand nine hundred and fifty six hectareas, twenty-five areas and twenty eight centiareas, the situation, boundaries and titles of which are given in the deed which the said Clavet executed the thirty-first of October last, and which is here understood as reproduced. (*d*) Señor Clavet states that the superficial area of the lands comprising the estates of San Antonio and San Rafael, referred to in the instrument of December eighteenth, one thousand eight hundred and eighty-three, executed by Señor Clavet, is three thousand two
119 hundred and nineteen hectareas, thirty-five areas and four centiareas; that the superficial area of the lands comprising the estate denominated Santa Isabel, referred to in the instrument of the twenty-third of the month and year mentioned, also executed by Señor Casal, is two thousand, one hundred and sixty-four hectareas, ninety four areas and forty-four centiareas; that the superficial area of the land denominated San Luis y la Concepcion, referred to in the instrument of October thirty-first last is three thousand nine hundred and fifty-six hectareas, twenty-five areas and twenty-eight centiareas; that these three areas make a sum total of nine thousand three hundred and forty hectareas, fifty four areas and seventy-six centiareas, and that, moreover, there is an excess of one hundred and ten hectareas, fifty four areas and seventy-six centiareas over and above the nine thousand two hundred and thirty hectareas of land which Señor Casal undertook to acquire by virtue of the first condition of the contract above inserted, dated the first day of August, in the year one thousand eight hundred and eighty-two, and finally, that this excess is the exclusive property of the Company, because it appears to be within the boundaries established on the plans of the said lands, and it is stated in the said condition that Señor Casal was to deliver to the Company all land lying within the said boundaries, even though they should exceed the nine thousand two hundred and thirty hectareas which the plans give as the superficial area. (*e*) His Excellency Lope Gisbert, in the rep-
120 resentative capacity in which he appears, declares that for the purposes stated he accepts the sale. (*f*) Both parties declare that in case of the sale of the lands of San Luis y La Concepcion, the consideration for the said sale is to be understood as eighty thousand pesos, because this is the sum corresponding, on this hypothesis, to the said lands by reason of the fact that it is the difference between the two hundred thousand pesos agreed upon as the total consideration for the grant of the fourth interest of the late Señor Casal and the one hundred and twenty thousand pesos which have been

assigned as the value of the San Antonio, San Rafael and Santa Isabel tracts acquired, according to the deeds of sale dated the thirteenth and twenty-third of December one thousand eight hundred and eighty-three. (*g*) Señor Clavet declares that the testamentary estate which he represents has received in cash the sum, of nine thousand, one hundred and twenty seven pesos and seventeen and three eighths cents on account of the eighty thousand pesos above mentioned, it appearing from the liquidation of accounts had by common agreement on September tenth last that there was a balance in favor of the estate of seventy thousand, eight hundred and seventy-two pesos and eighty-two and five eighths cents, which balance his Excellency Lope Gisbert will pay to Señor Clavet in cash at the time of the execution of this instrument in my presence and in that of the attesting witnesses, and by said payment the total amount of the consideration for the grant of Señor Casal's interest, as well as the consideration for the supposed sale, is satisfied,
121 and the compromise entered into by means of the instrument of the thirteenth of October last, and judicially approved, is executed in full. (*h*) The two contracting parties, for the purpose of the sale of the lands of the estates of San Luis and La Concepcion, declare that the price of eighty thousand pesos is a just and true consideration for the said sale, it being their will to make a perfect and irrevocable donation of any difference above or below one-half of the just value which may result, and to that end they waive the action of rescission which is allowed by the laws of the Compilation for lesion in contracts. I also certify that this instrument, having been reduced to writing, was approved by Señores Jose Clavet and Lope Gisbert, they reading it, each one for himself, and ratifying it, all in one single act in my presence and in that of the attesting witnesses, who stated that they were not disqualified to act as such, they being by name Jose Moreno Lacalle and Joaquin Jaramillo, of age and residents of this city, and who have also read the deed. Thereupon his Excellency Señor Gisbert exhibited a check, whose tenor is literally as follows: "Number 121,556.—Manila, November 22, 1887.—To the Chartered Bank of India, Australia & China.—Pay to Don Jose Clavet pesos seventy thousand, eight hundred and seventy-two pesos 83-100—Compañia General de Tabacos de Filipinas.—The Sub-administrator General—Claudio Inglesias—
122 $70,872.83-100—Jose Tornell—Endores: O K—Emilio Salles, Cashier." This copy agrees with the check exhibited, and which was delivered to Jose Clavet and received by him in my presence and in that of the attesting witnesses. The said Clavet stated that he received the said check to his satisfaction as payment of the seventy thousand eight hundred and seventy two pesos and eighty-two and five-eighths cents referred to in this deed, and therefore grants the Compañia General de Tabacos de Filipinas a complete acquittance of the said sum. I certify that I know the contracting parties and the witnesses hereto and finally, that they all signed with me.—A rubric.—Compañia General de Tabacos de Filipinas.—The General Manager.—Lope Gisbert—Jose Clavet.—Jose

Moreno Lacalle.—Joaquin Jaramillo.—In my presence, Ricardo Saavedra.—The foregoing is a copy of the original which appears in my current protocol from folio 1895 to 1917, to which I refer. And at the request of the parties hereto, for the purpose of delivering the same to the Compaña General de Tabacos de Filipinas, I issue this first copy on one sheet of paper of the illustrious seal and nine sheets of common paper, to which stamps have been affixed as follows: to the first sheet stamps to the value of twelve pesos, and to the others to the value of twenty five cents each one, in accordance with the new instructions governing the use of sealed paper; which said copy has been signed, sealed and rubricated in Manila on the date of the execution of the deed, and the making thereof duly noted on the margin of its original, to which I certify.—A rubric.—(Signed Ricardo Saavedra.—Manila.) This document was inscribed in the first volume of the Municipality of Cauayan, eleventh volume of the archives of this registry, folio one hundred and eighteen, property numbered seventy-five, first inscription. And in the second provisional volume of the Municipality of Angadanan, first provisional volume of the archives, seventh folio, property numbered one hundred and eighty-two, first inscription.—Ilagan, September 17, 1898.—Licentiate Juan G. Rodrigo.—A seal reading, "Registry of property of la Isabela." The foregoing agrees with its original, which has been taken from the record, to which I refer.

123

Ilagan, December 31, 1902.

FRANCISCO TACCAD, *Clerk.*

Number 11.

Haciendas of San Luis and La Concepcion.

MANILA, P. I., *April* 19, 1901.

Forestry Bureau, Intendencia, Manila, P. I.:

On this date, in compliance with the provisions of Article 75 of General Order No. 92 of the Office of the U. S. Military Governor in the Philippine Islands of June 27, 1900, the present certificate of the Register of Property of the Province of "Isabela" has been recorded in Book One, Number Ninety-two of my inscription.

GEORGE P. AHERN,
Captain 9th U. S. Infantry, in Charge of Bureau.

124 A seal reading "Forestry Bureau, Manila, P. I.

The foregoing is a literal copy of the document taken from the record marked number 11 of the documents introduced in evidence by Miguel Macias in this suit, and to which I refer.—

Ilagan, January 17, 1903.

FRANCISCO TACCAD,
Clerk of the Court of First Instance.

Number 12.

Office of the Provincial Treasurer.

ILAGAN, ISABELA, *December* 10, 1902.

I certify that the records of this office show that the Compañia General de Tabacos de Filipinas has paid the taxes for the year 1902 upon the properties declared by the said Company in the barrios of Minanga and Marahuirahui of the Municipality of Cauayan and in the barrio of San Luis and La Concepcion of the Municipality of Angadanan. Receipts for the said taxes were issued by Geo. W. Povey, Provincial Treasurer, as follows: Receipt No. 706001, for $547.79 6-. in Cauayan and Receipt No. 197504 for $109.54 3-. in Angadanan.

N. B. STEWART,
Treasurer, Province of Isabela.

Number 13.

In the town of Cauayan, Province of Isabela de Luzon, on the twenty-ninth of February, in the year one thousand eight
125 hundred and ninety-six, we, Maria Palatao, Gabina Aggabao, Vicente Palatao, Vicente Baccay, Isidro Balusa, Pascual Bagsig, Ildefonso Guzman, Calixto Angoluan, Francisco Baquiran, Gregorio Bautista, Cornelia Bautista, Regino Bautista, Domingo Baccay, Rosendo Baccay, Manuel Baquiran, Vicente Gammad, Justo Allan, Esteban Taguian, Martin Taguian, Victorino Bayubay, Julian Taguian, Agrapito Pasion, Agustin Calimag, Eugenio Guzman, Prudencio Calimag, Canuto Calimag, Jacinto Guzman, Agapito Guzman, Pedro Taguian, Gabriela Guzman, Jose Calimag, Vicente Magaru, Juan Magaru, Agustin ——, Bernabe Tattao, Fortunato Cuntapay, Roman Bassig, Juan Alicon, Gabino Pasiculan, Domingo Respicio, Placido Magaru, Isidro Bayubay, Mariano Reyes, Isabel Soriano, Pedro Saguitan, Arcadio Tubera, Agustin de la Fuente, Juan Pascual, Juan Cuchacha, Ignacio ——, Ambrocio ——, of age and with the necessary legal capacity to execute this instrument, do hereby freely and spontaneously state: That for some time back we have been working on the lands belonging to the Compañia General de Tabacos de Filipinas at the place called Minanga, within the jurisdiction of the town of Cauayan, and with an area of approximately one hundred hectareas bounded on the south and east by the lands of the said Company and on the north and west by the Rio Grande de Cagayan and by lands of Victor Guzman.

That by common agreement reached between us and Manuel Nieto y Noriega, who takes part in the execution of this contract as representative of the said company, we have agreed to con-
126 tinue working the said property as tenants, upon the following terms and conditions, to be effective from the date of this obligation:

First. Señor Nieto, as representative of the Compañia General de Tabacos de Filipinas, and as administrator of the lands above de-

scribed, authorizes us to cultivate them, without further obligation than that of delivering all of the tobacco which we may grow, to the said Manuel Nieto, upon the conditions of appraisal current in the market, and at the following prices: first grade, fourteen pesos and twenty-five cents per bale; second class, nine pesos per bale; third class, four pesos and twelve and a half cents per bale; class 4 S, two pesos per bale; class 4 C, one peso and a half per bale; fifth class, fifty cents per bale; we binding ourselves under no conditions to sell any amount of tobacco whatever grown on the said lands to any other person except the Company above referred to, or to such persons as may be authorized by the Company to make such purchases:

Second. Manuel Nieto authorizes us to plant maize and any other product, or vegetable upon the lands referred to in this contract, for our own use, without obligation on our part to pay any compensation therefor, but this planting is not to be conducted to an extent which might induce us to follow it as a business, and to neglect the tobacco. Each one may plant maize, yams or other vegetables on a half hectarea of land as a maximum.

Third. On the day on which either of us may fail to perform the stipulations entered into in this contract, and more
127 especially the first clause thereof, Señor Nieto shall be authorized to expell from the property such person or persons, and we on our part shall have no right to make any objection thereto.

To the faithful performance of this agreement we bind ourselves in the most solemn and formal manner by means of this document, which we desire to have the same force and effect as if it were a public instrument executed before a notary, and waive any right or benefit which the laws may grant us in case of breach on our part, and by virtue of this agreement so entered into with Señor Manuel Nieto we sign this document at the time and place above mentioned, as to those of us who know how to write, and of those of us who do not know how to write, Jose V. Poo, Enrique T. de Andrade, Manuel Rodriguez and Fulgencio Bunoan have signed at their request.—M. Nieto.—Gregorio Bautista.—Esteban Taguian,—Jacinto Guzman.—Teodoro Balusan.—At the request of Maria Balattao—Fulgencio Bumoan.—At the request of Gabino Aggabao—Fulgencio Bunoan. At the request of Vicenta Palattao—Fulgencio Bunoan.—At the request of Vicente Baccay—Fulgencio Bunoan.—At the request of Pascual Bassig—Fulgencio Bunoan.—At the request of Ildefonso Guzman—Fulgencio Bunoan.—At the request of Calixto Angoluan—Fulgencio Bunoan.—At the request of Francisco Baquiran—Fulgencio Bunoan.—At the request of Cornelio Bautista—Enrique T. de Andrade.—At the request of Regino
128 Bautista—Enrique T. de Andrade.—At the request of Domingo Baccay—Enrique T. de Andrade.—At the request of Rosendo Baccay—Enrique T. de Andrade.—At the request of Manuel Baquiran—Enrique T. de Andrade.—At the request of Vicente Gammad—Enrique T. de Andrade.—At the request of Justo Allam—Enrique T. de Andrade.—At the request of Victorino Bayubay—Enrique T. de Andrade.—At the request of Julian Taguian—Enrique T. de Andrade.—At the request of Agapito

Pasion—Enrique T. de Andrade.—At the request of Agustin Calimag—Jose V. Poo.—At the request of Eugenio Guzman—Jose V. Poo.—At the request of Prudencio Calimag—Jose V. Poo.—At the request of Canuto Calimag—Jose V. Poo.—At the request of Jacinto Guzman—Jose V. Poo.—At the request of Agapito Guzman—Jose V. Poo.—At the request of Pedro Taguilan—Jose V. Poo.—At the request of Gabriela Guzman—Jose V. Poo.—At the request of Jose Calimag—Jose V. Poo. At the request of Vicente Magaru—Jose V. Poo.—At the request of Juan Magaru—M. Rodriguez.—At the request of Bernabe Tattao—M. Rodriguez.—At the request of Fortunato Cuntapay—M. Rodriguez.—At the request of Roman Bassig—M. Rodriguez.—At the request of Domingo Respicio—M. Rodriguez.—At the request of Placido Maragu—M. Rodriguez.—At the request of Torcuato Taguian—M. Rodriguez.—At the request of Ignacio —— —M. Rodriguez.—At the request of Ambrosio —— —M. Rodriguez.—At the request of Mariano Reyes—Fulgencio Bunoan.—
At the request of Isabel Soriano—Fulgencio Bunoan.—At
129 the request of Arcadio Tubera—Fulgencio Bunoan.—At the request of Augustin de la Fuente—Fulgencio Bunoan.—At the request of Juan Pascual—Fulgencio Bunoan.—At the request of Carlos Cuchacha—Fulgencio Bunoan.—Witness Jose V. Poo. Witness—Enrique T. de Andrade.—Witness—Manuel Rodriguez.—Witness—Fulgencio Bunoan.—The foregoing agrees with its original, to which I refer.

Ilagan, December 23, 1912.

FRANCISCO TACCAD, *Clerk.*

130 Continuation of the Trial.

Sworn Testimony of Gregorio Soriano, a Resident of this City, by Profession Assistant Provincial Supervisor.

—. Are you a graduated surveyor and appraiser of Government lands?

A. Yes sir.

Q. Please exhibit your title to the Court.

A. Witness exhibits a transcript of his title as surveyor and several tax receipts for the personal tax for the exercise of this profession.

Q. Do you remember having gone to the hacienda de San Luis y la Concepcion in December of last year?

A. Yes sir.

Q. What did you go there for?

A. By the order of Señor Macias, head manager of the Company in this province, for the purpose of rectifying the plan and making a survey of the hacienda de San Luis y la Concepcion.

Q. What document or antecedent did you use for the purpose of taking the boundaries you have just mentioned?

A. Señor Macias first showed me the title deeds of the Company issued by the former office of Civil Administration, and then a plan, which I followed in conducting the operations above referred to.

Q. Showing you document No. 10, I will ask you to state if it is the same plan which you followed?

A. It is the same.

Q. State if on the boundary line or monument of the hacienda de San Luis y la Concepcion which you rectified you found any old marks or not?

131 A. Yes sir, in some places I found old marks and in the others no-.

Q. Did you leave any sign in the place where you fixed the boundary?

A. Yes sir, along the lines of the estate where I found live trees I ordered my assistant who accompanied me to blaze the trees when they were in line with the stakes which were planted, and in places where there were no live trees available on the corners I drove stakes.

Q. Was there any objection or protest on the part of the inhabitants of the places where you went by fixing the boundaries?

A. No sir, there was no protest.

Q. Did Captain Manuel Dalauidao protest?

A. No sir. On the night of the day on which I made the survey I went by Capt. Manuel Dalauidao's house and showed him the plan and he said nothing. Domingo Damatan was then present. I slept that same night in the house of Dalauidao.

Cross-examination:

Q. Who accompanied you in addition to Luis de la Vega when you made the survey?

A. Nobody else.

Q. Then, no person was present at the survey by order of any judicial order of the administrative authorities?

A. No person was present under such authority, but in my opinion the operation was of a legal character, because I hold professional diplomas.

Q. Do you know if the house of Captain Manuel Dalauidao is within or without the line which you ran?

A. It is without, because I had to walk a distance of some 300 meters to get to the house from the line.

132 Q. When you were engaged in the actual survey, did Manuel Dalauidao act as a witness?

A. No sir, he was not there when we were running the survey.

Q. How did he know about it?

A. Because when I went to his house with the said Vega, he asked us what we had been doing on the hacienda, and we replied that we had been making a survey.

Q. Do you know whether you said anything to Manuel Dalauidao as to the hacienda to which you referred?

A. Yes sir, I know that reference was made to the hacienda de San Luis.

Q. How do you know that?

A. Because we came from there.

Q. Did you run a line for any distance along the bank of the river, and if so how many meters more or less?

A. Yes sir, but I can not state how far exactly.

Q. Could you state better by looking at the plan?

A. If you point out the place concerning which you question me, yes sir.

Q. Having indicated to you on the map the line beginning on the bank of the river at the land which appears on the map as that of Joaquin Guzman and terminating where it forms almost a right angle on the West part of Mabantad, state the approximate distance?

A. After looking at the map I should say that the line concerning which I was questioned would be about 1300 and some odd meters, approximately in length.

Q. Is it customary in these Islands when a private surveyor accompanied by another private surveyor runs a line along the
133 bank of some river for the people who live in those places to come out to protest or interrupt the work which the surveyor in his private capacity is conducting?

A. It is customary for people who hear about it to go and see the operations.

Q. Can you state what might be the purpose of those who go to look on at an operation of such a private character?

The attorney for the plaintiff objects to the cross-question upon the ground that the witness can only testify as to what he knows personally and not as to the thoughts of others.

The Judge allowed the question to be answered.

A. To see if their lands fell within or without the line, and also for curiosity.

Q. When you ran a line on the bank of the river in this private capacity how may people know if you were surveying an hacienda or the river itself?

A. When they see what I am doing they find out what it is by informing one another.

Q. Did you order the trees on the West, South and East lines to be blazed also?

A. Some of them I had blazed by my assistant.

Q. Was this the only time that the lands of San Luis and la Concepcion were surveyed?

A. Yes sir.

Q. Have you ratified all the boundaries?

A. Yes sir, the lines of the general plan.

Q. In how many days did you perform the operation?

A. More than a month, perhaps forty days.

Q. How many days did the operation last on the north
134 part from the mouth of the Cornayan estero down to the extreme point of the western part of Mabantad?

A. I don't remember.

Q. Can't you remember approximately?

A. Approximately, I should say it was about six days.

Q. Was it necessary to place monuments at any points (trochas)?

A. Yes sir.

Q. Who made them, you or de la Vega?

A. The man the Company sent there for the purpose of making them when we went out to make the survey.

Q. How did you describe to Luis de la Vega the trees on the West, South and *West* which he was to blaze?

A. I told him that the trees which are right in line with the flags are to be blazed, so that we could put up a wire fence there.

Q. Is it not true that you changed on the map the form of the land which appears there as the land of Guzman?

A. Yes sir, because it is bounded by the Cagayan river and it may augment or may diminish.

Q. Did the land increase or diminish?

A. The land had been augmented on the western part of the hacienda and also on the north of the property of Mr. Guzman.

Q. Can you state the area of the land which in accordance with the map was left to Joaquin Guzman?

A. I cannot state precisely because I don't remember the area.

Approved and signed.

GREGORIO SORIANO.

Sworn Testimony of Ignacio Flores.

Q. Please answer the general questions.

A. My name is Ignacio Flores; resident of Cauayan; employee of the Company.

135 Q. Do you remember having been on the hacienda de San Luis and La Concepcion in the month of October of this year?

A. Yes sir, I recollect perfectly.

Q. What were you doing there?

A. I went there for the purpose of carrying out an order which the manager of the hacienda San Luis had received from the Head Manager of the firm for the purpose of notifying the people on the hacienda of San Luis and La Concepcion as to the conditions established by the firm on the said haciendas and on this account I together with the manager of the hacienda, Marcelino Gonzales, notified all the persons residing on the hacienda to meet together at the house of Dionicio Respicio. Some seven or eight did go there but refused to state their names, and having been informed what was our purpose thet refused to conform to the conditions which were read to them, and therefor- we drew up minutes of the meeting in which we stated that they had refused.

Q. Read the names of the defendants, and state whether the lands which they occupy and which are now the object of this litigation, are all within or without the perimeter of the hacienda of San Luis and de la Concepcion.

A. Yes sir, they are within.

Q. How do you know that?

A. Because before getting these people together as I stated in my former answer I went with Gonzales from house to house and saw that they were all within the wire fence around the land in question.

Q. Do you know how many years these defendants have been

residing on the lands of the hacienda of San Luis and de la
136 Concepcion?

A. I calculate that some of them have been for five years, others from three to four. I know this because in 1896, when I came to this province, I frequented those places on my private business, and saw that there were very few people there. Furthermore I know that Dionicio Respicio lived in Nappacu in 1896, and Miguel Medina in Pila in the township of Cauayan in 1899.

Cross-examination:

Q. Can you not state with a little more exactness the number of years that the persons living on the rancho of Mabantad and Minanga have been there? Please state if you know it, not what your calculation is.

A. I can't state exactly because as I said I never lived at Minanga and Mabantad.

Q. The witness calculates that some of the persons in question have lived there, but none of those for more than five years. Isn't it true that they have lived there longer?

A. No sir, because as I said, in the year 1896 all the place occupies by the defendants was land covered with woods and trees, so that since 1896 down to this date not more than five years have passed.

Q. Isn't it true that your calculations that from the year 1896 down to this date only five years have passed is a somewhat erroneous calculation?

A. Yes, That's true, that since 1896 down to the present time six years have passed, but as I referred to the duration of time
137 that these men have been on San Luis and La Concepcion, I calculated on answering the first question by the time which these men have been there, and not since 1896 when the land in question was still covered with trees.

Q. In what month of the year 1896 did you go for the first time to the hacienda in question?

A. On account of the time which has passed I cannot remember what month it was, but I think it was about the end of the year.

Q. When was that wire fence you have mentioned put around the hacienda as a line?

A. I don't know because I didn't live there.

Q. What was the last time that you visited this part of the hacienda before you went there in October of this year?

A. I remember having gone there once but cannot state exactly when.

Q. Was the wire fence there at that time?

A. Yes sir.

Q. Have you visited this part of the hacienda between the month of January and the month of June of this year?

A. I don't remember.

Q. Did you visit this part of the hacienda at any time before the "penultima" visit you have mentioned?

A. I don't remember, as I have said.

Q. How is it, that you say that you remember that you went to

this part of the hacienda at the end of 1896 and yet you can not remember and state to the Court whether you visited this part of the hacienda in the year 1902 before the month in which you made your "penultima" visit?

A. I remember it because I remember that that year I came
138 to this province, and I also remember that I was on the hacienda last October.

Q. Do you know when this wire fence was put there?

A. No sir.

Q. How do you know that the wire fence is on the line of the hacienda at San Luis and La Concepcion?

A. I have been told by the employees that it was put up by the Company.

This testimony approved and signed.

IGNACIO FLORES.

Sworn Testimony of Lucas Mendoza.

Q. Answer the general questions.

A. My name is Lucas Mendoza; I reside in Cauayan. I am a member of the municipal council.

Q. Do you know Justo Allam?

A. Yes, I know him.

Q. Do you know if he has been sued by the Compañia General de Tabacos?

A. Yes sir, he has been sued.

Q. How long have you lived in Cauayan?

A. Since my birth.

Q. Do you remember having taken part in any survey of the lands now known as the hacienda of San Luis and La Concepcion?

A. Yes sir, I remember that in 82 or 83 I helped to make the survey.

Q. In what capacity?

A. As Teniente Mayor because I was delegated by the Gobernadorcillo to accompany the surveyor who surveyed the lands.

Q. Can you describe the line which they ran?

A. The line commenced on the Cornayan estuary at some 1500 meters from its mouth, I should judge, and outside the ranchos of Minanga, Mabantad and Andarayan?

Q. Were any people living in Minanga and Mabantad at
139 that time?

A. Yes sir, at that time Don Joaquin Guzman lived at Minanga with his sons, Justo Allam, Teodoro Balusan, Ignacio Malana, and many others whom I cannot remember, and in Mabantad Don Manuel Dalauidao and some other Ilocanos lived.

Q. What is the area of the lands of Joaquin Guzman?

A. It is quite large as it has a place to pasture cattle and also a place to cultivate tobacco.

Q. Are you a member of the town council for all the rancho of Minanga?

A. Since I was insulted by Mr. Macias, the Manager of the Company, I ceased to act as member of the council of Minanga because I was afraid that he might have me bound.

Q. Who appointed you a member of the council?

A. Governor Johnston last year.

Q. Do you know if at any time in Cauayan a notice was given by posters or in any other way that certain persons had made application for the purchase of certain parcels of land in Minanga and Mabantad from the State?

A. I know nothing about this; I have heard nothing of it.

Q. Since when have you heard of the existence of an hacienda called San Luis and La Concepcion?

A. Since the last few days only.

Q. Have you ever been acquainted with Doroteo Faustino, or Santiago Garcia, or Potenciano Hernandez, or Marcos Patiño, or Valentin Bizcarra, or Potenciano de los Santos?

A. I never knew any of them.

Q. Have you ever heard of any family which lives or has lived in the township of Cauayan any family of the names above mentioned?

A. No sir.

140 Cross-examination:

Q. According to your testimony you are now very angry with the manager of the Company, Don Miguel Macias, are you not?

A. No sir.

Q. State what was the purpose of the survey of the lands made by the surveyor whom you accompanied?

A. I don't know what the purpose was, I simply accompanied the surveyor.

Q. If you were delegated by the Gobernadorcillo to accompany him for making a survey, how is it that you didn't find out anything about the duty you were to perform, and secondly, the reason why you went with the surveyor to make the survey?

A. It was enough for me that the Gobernadorcillo ordered me to accompany the surveyor and nothing more.

Q. According to your testimony you don't remember to know the name of the surveyor, is this not true?

A. I don't remember his name.

Q. How do you happen to remember those 1500 meters?

A. It is my opinion that is all.

Q. How do you know and remember perfectly what you said about Justo Allam, Teodoro Balusan and Ignacio Malaña?

A. Because they lived in Minanga many years ago.

Testimony signed and approved.

LUCAS MENDOZA.

Sworn Testimony of Engracia Maraggun.

Q. Answer the *h*eneral questions.

A. My name is Engracia Maraggun de Lacaste; resident of Minanga; engaged in the usual occupations of my sex.

Q. What was the name of your first husband?
141 A. Victor Guzman.
Q. How many years were you married to him?
A. Ten years.
Q. Where did you live with Victor Guzman?
A. On the Minanga rancho.
Q. Does your house still exist?
A. No Sir, because it was destroyed by the Company on June 16th of this year.
Q. Has the Company a house there.
A. It has one near the house to which I referred in my former answer.
Q. While Victor Guzman was alive had the Company a house there?
A. No.
Q. When did Victor Guzman die?
A. On the 15th or 16th of June, 1896.
Q. When did the Company begin to build the first house on your land?
A. In August or September of the same year.
Q. Do you know Joaquin Guzman?
A. Yes.
Q. When did he die?
A. In 1887, in October or November.
Q. Did you know his lands?
A. Yes sir.
Q. Could you describe their extent and boundaries?
A. I don't know their extent, but the boundaries were on the north of the Rio Cagayan, on the east the Cornayan estuary, on the south the woods and houses of Proceso Gregorio Bautista, and on the west Teodoro Balusan.
Q. Is the land you describe that of Victor Guzman or that of Joaquin Guzman?
A. That of Victor Guzman.
Q. And was Joaquin's land larger or smaller?
A. Joaquin's was larger than Victor's.
Q. Has Joaquin Guzman many head of cattle, and if
142 so, of what kind?
A. Yes sir, he had over two hundred carabaos.
Q. When you married Victor Guzman were there some people already working at Minanga and Mabantad?
A. Yes sir, there were.
Q. During the time that you lived in Minanga did you observe that the river had increased or decreased the land of Victor Guzman?
A. I observed that it increased it a great deal.
Q. Then the land must be now much larger than it was some years ago?
A. Certainly.
Q. Are you at the present time in possession of some of the land which Victor Guzman left you?
A. Yes sir.

Q. Do you mean to say that Victor Guzman only possessed a little piece of land now enclosed with a wire fence?

A. Part of the land is closed in.

Q. Did the Compañia General take from you by force part of the land which was left you by Victor Guzman?

A. Yes sir.

Testimony signed and approved.

ENGRACIA MARAGGUN.

Sworn testimony of Fernanda Corciano, Widow of Joaquin Guzman.

Q. Answer the general questions.

A. My name is Fernanda Corciano, resident of Turayon, township of Cauayan, engaged in the usual occupations of my sex.

Q. How many years were you married to Joaquin Guzman?

A. Some 15 or 16 years.

Q. Where is the house in which you lived?

143 A. It was at Minanga.

Q. Did you live with him continually?

A. Yes sir.

Q. Can you describe the extent or boundaries of the land occupied by Joaquin Guzman?

A. Yes sir, it was a very big piece of land without the precise boundaries.

Q. Do you remember the boundaries of that land on the north?

A. It is bounded on the north by the Cornayan.

Q. Describe the boundaries as you remember them.

A. I only remember that on the north it was bounded by the Cornayan estuary, because the only man in Minanga was my husband.

Q. Do you mean to say that he was the only owner of the land or the only man who lived there?

A. He was the only man who lived there.

Q. And had no tenants?

A. Yes sir, he had some afterwards.

Q. When did you become acquainted with the first tenants?

A. When I married him he had some tenants.

Q. Had Don Joaquin some carabaos?

A. Yes sir, he had a great many.

Q. And when Don Joaquin died, did he leave any part of the land?

A. Yes sir, he left the land to me and my sons Proceso and Victor.

Q. Have you your part still?

A. I sold it to one Roman Bassig and Bernabe Pattao.

Q. When did you sell to Bassig?

A. If I'm not mistaken some ten years ago more or less.

Q. And when to Bernabe Pattao?

A. Three years ago.

Q. Do you remember when Joaquin Guzman died?

A. About 15 years ago more or less.

144 Q. And how many years were you married to Joaquin Guzman?

A. About seven years ago.

Q. Did you ever observe any one take formal possession of the Minanga lands?

A. No, I never saw any one do so.

C. Q. When you sold Bassig the land to which you refer, in your testimony, was any formal document made out?

A. Yes sir, a receipt was given.

C. Q. Did you do the same with respect to the sale to Pattao?

A. No sir.

Q. What was the consideration for the sale to Bassig?

A. One carabao.

Q. What was the consideration for the sale to Pattao?

A. One carabao cow.

Q. How do you count the years, by crops or by the term of office of the Gobernadorcillos?

A. By the crops of tobacco.

Q. How many crops to the year?

A. One crop to the year.

Q. And how do you count the years when you don't get a crop?

A. Count by the crops of my companions.

Q. Was there any judicial partition made between you and your sons as to the lands left by your deceased husband?

A. The partition was made without any judicial intervention.

Q. What were the respective ages of your sons when the partition was made?

A. Proceso was about thirty years old and Victor about twenty.

Q. How many years ago was that?

A. Some 15 or 16 years.

Q. Witness ratifies her testimony, and not knowing how
145 to sign the interpreter signed for her.

AUGUSTIN HIPOLITO,
Official Interpreter.

Sworn Testimony of Don Nicolas Lacaste.

Q. Answer the general questions.

A. My name is Nicolas Lacaste, resident of Minanga, and a farmer by occupation.

Q. When and where were you born?

Q. In 1862, in Tagudin, Ilocos Sur.

Q. When did you first come to the province of Isabela, and where did you settle?

A. I arrived in 1884, and settled in the town of Naguilian, Isabela.

Q. What was your occupation there?

A. During the first year I was a tailor and day laborer. After the year 1886 I was a clerk in the office of Baer Senior and Company. From '87 to '96 I was a clerk with the Compañia General de Tabacos, and afterwards was a tobacco buyer for different firms.

Q. When did you go to Minanga for the first time?
A. In 1887.
Q. Who was at that time in possession of the Minanga lands?
A. The sons of Joaquin Guzman, called Proceso and Victor, and the people who live there now.
Q. Did you also go to Mabantad the same year?
A. Yes sir.
Q. Were any people living in Mabantad at that time?
A. Yes sir.
Q. When were you married to your present wife, Engracaia Maraggun?
A. In the month of August, 1897.
146 Q. Have you been living in Minanga since that time?
A. Yes sir.
Q. When you were married, had the Compañia General a building on the Minanga lands?
A. It had a little house near the store which it has there now.
Q. What kind of house was it?
A. A bamboo house.
Q. Who lived there?
A. I didn't see anybody because it was always closed.
Q. Was another house constructed later?
A. Yes sir, they commenced to put up posts towards the end of last year and they call it the storehouse of the Compañia Gral.
Q. Did you as husband of the owner of the land permit this building to go up?
A. No sir, I told the men who went to dig on the land that it belonged to Victor Guzman.
Q. When you went to live at Minanga in 1897, was it known that the Compañia Gral. claimed the Minanga and Mabantad lands as its property?
A. I didn't hear anything of that kind.
Q. Did you buy tobacco in Minanga in 1897?
A. Yes sir, I bought three lots for a Chino.
Q. Are the persons whose crops you bought that year among the names which appear at the foot of this document No. 13 which I show you?
A. Yes sir, here are the names of Teodoro Balusan, Vicente Baccay and Francisco Baquiran from whom I purchased the three lots of tobacco.
Q. When did you hear for the first time of the existence of an hacienda by the name of San Luis and La Concepcion?
A. Only this year.
147 Q. When did you hear for the first time that the Compañia General claimed to own Minanga and Mabantad?
A. Only within this year.
Q. When were you sued by the Compañia Gral. on account of holding lands in Minanga and Mabantad?
A. In the month of April last.
Q. And did you not have a complaint pending in the Justice

court at Cauayan before the month of April of this year concerning this land?

A. Yes sir, in the month of December last year.

Q. Then it was in December 1901, that you first heard of the claim of the Company for the Minanga and Mabantad lands?

A. Yes sir.

Q. Before that, who was publicly regarded to be the owner of the Minanga and Mabantad lands?

A. All the Minanga rancho was known as the property of Joaquin Guzman and sons and other people, and the Mabantad rancho as the property of Don Manuel Dalauidao and other people.

Q. Did you ever observe that the Minanga land was surveyed by a surveyor?

A. Yes sir, it was surveyed by a surveyor within this year, I think.

Q. Do you know who this surveyor was?

A. Yes sir, his name is Don Gregorio Soriano.

Q. Can't you remember exactly when Soriano surveyed the land?

A. I can't state exactly, but I believe that it was about the end of last year.

Q. And as a result of this survey was a line marked in any way?

A. Yes sir, by bamboo stakes.

Q. Are these bamboo stakes still there?

A. No sir, not now.

Q. And what mark has been put in place of the bamboo?

A. A wire fence.

148 Q. When was the wire fence put up?

A. It was commenced about the end of June or at the beginning of July of this year.

Q. And before that time did you know of any monuments or other marks indicating the ownership by any person of lands in Minanga other than the natives who now occupy it?

—. No sir, I never saw any monument or other sign.

C. Q. For what reason did you leave your employment as clerk of the Compañia General de Tabacos?

A. I obtained permission from the Company's storekeeper.

Q. Isn't it true that Señor Pal, the storekeeper at Naguilian discharged you from the employ of the Compañia General de Tabacos de Filipinas?

A. It isn't true.

Q. Have you gone over every foot of the hacienda of San Luis and La Concepcion?

A. No sir, although I have gone over a number of parts of it.

Q. Have these men whom you state to be the owners of the lands in Minanga and Mabantad any title showing that they have acquired them by purchase or composition with the State?

A. I only know that Victor Guzman has a possessory title; as to the others I can't say.

Testimony approved and signed.

NICOLAS LACASTE.

Sworn Testimony of Justo Allam for the Defense.

Q. Answer the general questions.

A. My name is Justo Allam. I am a resident of Minanga and a farmer by occupation.

Q. How many years have you been living in Minanga?

149 A. Thirty years.

Q. What did you do when you first went there?

A. During the first years I was a tenant of Don Joaquin Guzman.

Q. Did Joaquin Guzman give you any land to cultivate?

A. Yes sir.

Q. Have you been living on the land down to the present time?

A. Yes sir.

Q. What is the name of Joaquin Guzman's land?

A. Minanga.

Q. Was this land large or small?

A. It was large.

Q. Were there many tenants on it?

A. Yes sir.

Q. Were there tenants on it when you arrived?

A. Yes sir.

Q. Can you describe the boundaries of Joaquin Guzman's land?

A. The boundaries are the Cagayan River on the east Cornayan, on the South Antagan and Narrasuan and on the west Casan rancho and Mabantad.

Q. When did Joaquin Guzman die?

A. About 15 or 16 years ago according to my calculation.

Q. Did the Compañia General call upon you this year to sign a contract of lease?

A. Yes sir.

Q. Who called — you?

A. Señor Macias.

Q. And what contract did Señor Macias want you to sign?

A. A contract by which he wanted me to become a tenant of the Company, but I would not accept it.

Q. Did you sign or authorize any other person to sign a contract with the Compañia General before this year?

A. No sir.

Q. Do you know if any of your companions signed a con-

150 tract with the Company in 1896?

A. Yes sir.

Q. Can you explain why your name appears on the contract?

A. I cannot explain it.

Q. Is the land now occupied by you situated within the boundaries of the lands of Joaquin Guzman?

A. Yes sir.

Q. How many plants of tobacco can you plant on your land?

A. More than 20,000 plants.

Q. Do you know how many carabaos Joaquin Guzman had when he died?

A. Yes sir, he had over two hundred head.

C. Q. Where were you born?
A. In Enrile, Cagayan.
Q. When did you leave Enrile to go and settle in Minanga, township of Cauayan?
A. I don't remember.
Q. How do you know the boundaries of Joaquin Guzman's land?
A. I was told by Don Joaquin.
Q. Isn't it true that in recognition of the ownership by the Compañia General de Tabacos of Filipinas of the lands in question which you occupy that you have delivered the employees of the Company your tobacco?
A. It isn't true.

Questions by the JUDGE:

Q. Who was the cabeza de barangay during the first years of your residence in Minanga?
A. Captain Pedro del Rosario.
Q. Who paid for you the so called tributes at that time?
A. I did.
Q. Was it not Don Joaquin Guzman whose tenant you say you were?
A. During the first years he paid for me.
Q. Do you think that the Compañia General has any book concerning you?
A. Yes sir.
151 Q. How is it that the Company has it?
A. The Company gave it to me by force.
Q. Are all those who have these title books its tenants?
A. Yes sir, but they gave it to me by force.
Q. Do you know how to write?
A. No sir.

This testimony was approved and the witness not knowing how to write the interpreter signed for him.

AUGUSTIN HIPOLITO,
Official Interpreter.

Sworn Testimony of Ignacio Malana.

Q. Answer the general questions.
A. My name is Ignacio Malana, I am a resident of Minanga, and a farmer by occupation.
Q. How many years ago did you come to Minanga?
A. Thirty years ago.
Q. Was Justo Allam there when you arrived?
A. I arrived there at the same time as he did.
Q. What did you do when you arrived at Minanga?
A. I ploughed fields.
Q. On whose land?
A. On Don Joaquin Guzman's land.
Q. From that time down to this date, are you still working the same lands?
A. Yes sir.

Q. Did you ever sign a contract with the Compañia General as tenant?
A. No sir.
Q. How many plants of tobacco can you grow on your field?
A. More than 30,000 plants according to my calculation.
Q. Did you ever observe that anyone was given formal possession of the Minanga lands?
A. I don't know.
Q. How long is it since you heard that the Compañia General claims the ownership of the Minanga rancho?
152 A. Only this year.

C. Q. What year did you leave Enrile, province of Cagayan, to fix your residence at Minanga?
A. I don't remember?

Questions by the JUDGE:

Q. Do you know what the present date, month and year is?
A. No sir, because I don't know how to count the years.

The witness approves his testimony, and not knowing how to sign the interpreter signs for him.

AGUSTIN HIPOLITO,
Official Interpreter.

Sworn Testimony of Teodoro Balusan.

Q. Answer the general questions.
A. My name is Teodoro Balusan, I am a resident of Cauayan, and a farmer of the barrio of Minanga.
Q. How many years ago did you come to Minanga?
A. Thirty years ago.
Q. Was Justo Allam there when you arrived?
A. Yes sir, because we arrived together.
Q. What did you do upon your arrival at Minanga?
A. I worked for Don Joaquin Guzman as his tenant.
Q. Have you been cultivating the same land since that time?
A. Yes sir.
Q. Are your fields and those of Justo Allam situated within the boundaries of Joaquin Guzman's lands?
A. Yes sir.
Q. Did you know Vicente Palattao?
A. Yes sir.
Q. Were you asked to go to his house about the beginning of 96?
A. Yes sir, by order of the Spaniards.
153 Q. And did you go to his house?
A. Yes, sir.
Q. Whom did you meet at his house?
A. I met there four Spaniards, but only knew Don Manuel Rodriguez.
Q. What did the Spaniards state to you there?
A. One of them who was a tall man told me not to be afraid but

to sign the contract as he would buy my tobacco from me at 25 cents a stalk.

Q. And didn't he tell you that you must acknowledge the ownership of the Company?

A. No, sir.

Q. And did you sign the document?

A. Yes, sir, but I didn't know what its contents were.

Q. Did you sell your tobacco in 96 to the Compañia General?

A. No, sir.

Q. To whom did you sell it?

A. To a broker of the firm of Baer Senior.

Q. To whom did you sell your tobacco in 1897?

A. To Don Nicolas Lacaste.

Q. And to whom in the following years?

A. I can't remember exactly but I think I sold my tobacco to Lacaste 3 or 4 times.

Q. How many plants of tobacco can you grow in your fields?

A. About 30,000 plants.

C. Q. In what year did you leave Enrile to fix your residence at Minanga?

A. I don't remember.

C. Q. Who went with you and Justo Allam when you left Enrile to go and live at Minanga?

A. The two of us alone.

Testimony signed and approved.

TEODORO BALUSAN.

Sworn Testimony of Teodoro Vidal, Given in His Own Behalf.

Q. Answer the general questions.

A. My name is Teodoro Vidal, I am a resident of Minanga, township of Camayan, and a farmer by occupation.

154 Q. How many years have you been living in Minanga?

A. Some 15 or 16 years.

Q. Are you acquainted with D. Joaquin Guzman?

A. Yes, sir.

Q. How long have you known him?

A. A little less than a year or about a year.

Q. Have you cultivated the field on Joaquin Guzman's land?

A. Yes, sir.

Q. From that time down to the present date have you continued cultivating that field?

A. Yes, sir.

Q. Do you know Justo Allam?

A. Yes, sir, I have known him for a long time because I found him at Minanga when I arrived.

Q. Did you ever see a surveyor survey the Minanga lands?

A. I saw him do so this year.

C. Q. What year did you arrive at Minanga?
A. I can't calculate.
C. Q. How do you know then the number of years you have been living at Minanga?
A. I have been living there 16 years up to the present.

The testimony is approved, and the witness not knowing how to sign the interpreter signed for him.

AGUSTIN HIPOLITO,
Official Interpreter.

Testimony of Dionicio Respicio as a Witness in His Own Behalf.

Q. Answer the general questions.
A. My name is Dionisio Respicio, I am a resident of Mabantad, and a farmer by occupation.
Q. How many years ago did you come to Mabantad?
A. 12 years ago.
155 Q. Were there many people at Mabantad when you arrived?
A. Yes, sir, there were many Cagayan people there.
Q. Have you farmed at Mabantad?
A. Yes, sir.
Q. Before you commenced to farm did you inquire as to whether you were farming lands belonging to someone else?
A. Yes, sir, I did inquire.
—. Did you know anybody at Minanga at the time of your arrival?
A. Yes, sir.
Q. Did you know Justo Allam?
A. Yes, sir, because he was a neighbor of mine at that place, in Minanga.
Q. Did the Compañia General at any time ask you to sign a contract of lease?
A. Yes, sir, but I refused to sign.
Q. When?
A. In the month of July this year.
Q. Who informed you of the conditions of the contract?
A. Señor Gonzales and Ignacio Flores.
Q. When was the wire fence now standing on the bank of the river at Mabantad constructed?
A. In the month of August the fence was put up.
Q. Before that fence was put up did you know of any monuments or other signs which might indicate the ownership of the Company?
A. I didn't see any monument or sign before the wire fence was put up.
Q. How long is it since you have known that the Company claims to own the Mabantad rancho?
A. Only this year.

C. Q. Before you went to live in Mabantad in what town did you reside?

A. In the town of Ilagan.

C. Q. Did you ever reside at any other town?

A. No, sir.

C. Q. Isn't it true that in 1895 you resided at Napaccu
156 in the township of Reina Mercedes?

A. No, sir, it was my brother who lived there.

Testimony signed and approved.

DIONISIO RESPICIO.

At this point and without prejudice to the continuing of the examination of many other witnesses for the defendants, the attorney asked the court to have the books of register, the Cauayan book and the first provisional volume of Angadanan, brought into Court in accordance with article 332 of the Code of Civil Procedure.

The attorney for the adverse party stated that the Mortgage Law prohibits the removal *from* the books from the office of the Registrar, and furthermore, because there has been no cross-complaint stating new facts requiring such evidence, and therefore objects to its admission.

The court deciding the question held that article 225 of the Mortgage Law prohibits the removal of the books of the registry from the office of the Registrar, and that the Code of Civil Procedure, by reason of its general character, although a subsequent enactment, can not have the effect of repealing a prior special law, and therefore refused to accept the offered evidence. The attorney for the defendant thereupon excepted.

Sworn Testimony of Domingo Baccay.

Q. Answer the general questions.

A. My name is Domingo Baccay, I am a resident of Minanga, township of Cauayan, and a farmer by occupation.

Q. How many years have you been in Minanga?
157 A. 29 years.

Q. Did you know Joaquin Guzman?

A. Yes, sir, because I was his tenant and paid him tribute.

Q. From your arrival down there to this date have you cultivated that land?

A. Yes, sir.

Q. Do you know Vicenta Palattao?

A. Yes, sir, I know her.

Q. Do you remember if you were asked to go to her house some years ago?

A. No, sir.

Q. How do you explain that your name appears on a contract which was signed with the Cia. General in Vicenta Palattao's house?

A. I cannot explain it because I didn't see my name put in the contract.

Q. When did you hear for the first time that the Cia. General claimed to own the Minanga lands?
A. This year for the first time.
Q. Do you know Enrique T. de Andrade?
A. Yes, sir, I know him.
Q. Did you ever authorize him to sign a contract with the Cia. Genl. in your name?
A. No, sir.
Q. Did you ever see anyone given formal possession of the lands which were legally the property of Joaquin Guzman?
A. No, sir.

C. Q. Where were you born?
A. In Tuguegarao, Cagayan.
C. Q. When did you leave there to go to Minanga?
A. I only know that it was 32 years ago.
Q. Can you state exactly the year that you went to Minanga to live?
A. I cannot state exactly the year or the date.

Questions by the COURT:

158 Q. What is your present age?
A. 61 years.

The witness approved this testimony and being unable to sign the interpreter signed for him.

AGUSTIN HIPOLITO.

Sworn Testimony of Arcadio Tubera, alias Tubias, as a Witness in His Own Behalf.

Q. Answer the general questions.
A. My name is Arcadio Tubera (a) Tubias, I am a resident of Minanga, and a farmer by occupation.
Q. How many years is it since you came to Minanga?
A. 16 years.
Q. Do you know Vicenta Palattao?
A. Yes sir.
Q. Were you asked to go to her house some years ago by the Spaniards?
A. Yes sir, I was asked to go there for the purpose of making a contract upon good conditions for the sale of tobacco.
Q. Did you go to the house?
A. Yes sir, but when I got there and started to walk upstairs I met the Spaniards coming down, and they told me they were in a hurry, and that if I wanted to sell them my tobacco on better terms than other people that I could come back, but I never went back.
Q. Did these Spaniards tell you that you must acknowledge the ownership of the Cia. General?
A. No sir, they did not say anything to me about that.
Q. Were Justo Allam, Ignacio Malana, Teodoro Balusan, Teodoro

Vidal, Justo Eugenio, Dionisio Respicio, Domingo Baccay, Vicente Baccay, and Gregorio Bautista also at Vicenta Palattao's house?

A. No sir, I didn't see them at the house.

C. Q. What year did you go to Minanga to live?

159 A. I only know that I was 16 years of age when I went there.

The witness approves this testimony and being unable to sign the interpreter signs for him.

AGUSTIN HIPOLITO,
Official Interpreter.

Sworn Testimony of Agustin Dorone, as a Witness in His Own Behalf.

Q. Answer the general questions.

A. My name is Agustin Dorone, I am a resident of Mabantad, and am engaged in such labor as my advanced age will permit.

Q. How many years is it since you came to Mabantad?

A. 11 years.

Q. When you arrived there was Dionisio Respicio there?

A. Yes sir, he arrived before I did.

Q. What was the first time that the Cia. General made a claim to your field at Mabantad?

A. Last year.

C. Q. When did you go to live at Mabantad?

A. I can't say because I don't know how to read.

C. Q. Have you any title to the lands you occupy issued by the Spanish Government?

A. No sir.

The witness approves his testimony, and being unable to sign the interpreter signs for him.

AGUSTIN HIPOLITO,
Official Interpreter.

Sworn Testimony of Zacarias de la Cruz, as a Witness in His Own Behalf.

Q. Answer the general questions.

A. My name is Zacarias de la Cruz, I am a resident of Mabantad, and a farmer by occupation.

Q. How many years is it since you came to Mabantad?

160 A. 11 years.

Q. Was Dionisio Respicio there?

A. Yes sir.

Q. And when you arrived who owned the Mabantad rancho?

A. It was said that it belonged to the township, but a certain Captain Manuel, to whom I applied, had a piece of land adjoining.

Q. When did you hear for the first time that the Cia. General claimed to own the Mabantad lands?

A. I heard it for the first time this year.

Q. Are the boundaries of the land which the Company claims marked with wire fences?

A. Yes sir, and that wire fence was put up in August of this year.

Q. And before August did you ever see monuments or signs indicating the boundaries of an hacienda?

A. No sir, I didn't see any monument or a sign.

Q. Did the Cia. General ever require you to sign a contract of lease?

A. Yes sir, in the month of August, this year, a man called Gonzales, a Spaniard, and Don Ignacio Flores came to get me to sign a contract of lease with the Company, but I would not sign.

C. Q. When did you go to Mabantad to live?

A. I have been a resident there now for 11 years.

C. Q. Have you a title deed issued by the Spanish Government to the lands you occupy?

A. Not yet.

C. Q. Do you know every foot of the hacienda of San Luis and La Concepcion?

A. I don't know any such hacienda.

The witness approves the testimony, and being unable to sign the interpreter signs for him.

AGUSTIN HIPOLITO,
Official Interpreter.

161 *Sworn Testimony of Manuel Dalauidao, Resident of Mabantad, Cauayan, Farmer by Occupation.*

Q. What is your age?

A. 61 years.

Q. Where were you born?

A. In Cauayan, Isabela.

Q. How long have you been living at Mabantad?

A. Since my childhood.

Q. Do you know D. Joaquin Guzman?

A. Yes sir.

—. Do you know more or less when Joaquin Guzman came to Minanga?

A. About 25 years ago more or less.

Q. Can you describe Joaquin Guzman's land with respect to its extent and boundaries?

A. It was very big; it was bounded on the north with the Cornayan, at the east by the forest, on the south by the forest and on the west by the river Cagayan.

Q. Could you make a map of Joaquin's land and your land for the purpose of pointing out the forest which you refer to as the boundary?

A. Yes sir.

The witness at this point made a sort of map with a pencil to show what he meant by his testimony.

Q. Is it true that your lands adjoin D. Joaquin Guzman's on the forest which was the boundary?

A. Yes sir.

Q. Do you know how many tenants more or less there were on Guzman's land?

A. There are a great many according to my calculation there were there from 100 to 110.

Q. How many plants of tobacco do you count to each tenant?

A. Each tenant might have had from 4,000, 5,000, 6,000, 7,000, 8,000, or 10,000.

162 Q. Did Don Joaquin also have a good deal of pasture land?

A. Yes sir, he had pasture land for 200 carabaos.

Q. Who gave the name of Minanga to this rancho?

A. Don Joaquin Guzman.

Q. Before the arrival of Joaquin Guzman was not the rancho known by this name?

A. No sir.

Q. Did the wire fence which was put up by the Company cut out a piece of land cultivated by you?

The Judge refused to allow the question.

Q. Have you ever acknowledged the ownership of anyone to the lands occupied by you?

The attorney for the adverse party objects to the question upon the ground that it is irrelevant, as the witness is not a defendant.

The Judge overruled the objection.

A. No sir.

Q. Have you ever observed during the last 25 years that the Mabantad lands have been surveyed by a surveyor?

A. No sir, I didn't see anything of the kind.

Q. Have you ever heard of the existence of an hacienda called San Luis and la Concepcion?

A. No sir.

Q. Did you know if there was a wire fence running over the Mabantad rancho?

A. Yes sir, since August of this year.

Q. Does this wire fence go over your lands?

A. Yes sir, it runs through the middle of my land.

Q. Do you know who ordered it to be put there?

A. No sir.

Q. Are you satisfied to have this fence there?

A. No sir, I'm not.

163 Q. Do you know what was the purpose for which this fence was put up?

A. No sir, I do not.

Q. Isn't it true that many of the people who went to Mabantad to cultivate land asked your permission to do so?

A. Yes, sir.

Q. Why did they ask your permission and not that of any other person?

A. Because I am the head of the rancho and because all the lands included therein belong to me.

Q. How many years is it since your father died?

A. 20 years more or less.

Q. Was your father the owner of the lands which now belong to you?

A. Yes sir.

Q. Had he any carabaos?

A. Yes sir.

Q. Had your father any laborers?

A. No sir.

Q. What did your father do with the Mabantad lands?

A. He cultivated them.

Q. Did he grow tobacco?

A. Tobacco and maize.

Q. Had he any companions in his work?

A. No sir.

Q. Did your father work alone, without any assistance?

A. He worked alone.

Q. How long is it since you have grown tobacco?

A. Since I was forty years of age.

Q. Did you have any tenants on your land?

A. I had a great many but some of them went away leaving three tributes.

Q. How many families more or less lived on your lands?

A. 100 families or more.

Q. When your father died were there many families there?

164

A. No, sir.

Q. Do you know if Joaquin Guzman had any tenants?

A. Yes, sir he brought them from Tuguegarao.

Q. Do you know Justo Allam?

A. Yes sir.

Q. Do you know Teodoro Balusan, Justo Eugenio, Ignacio Malana and Teodoro Balusan?

A. I don't know them because they are now here.

Q. If you don't know them, how do you know that they are now comers?

A. Yes sir, because I have heard their names mentioned, and that they knew a number of the old settlers who came from Tuguegarao.

Q. Can you state how many years ago more or less D. Joaquin Guzman brought them from Tuguegarao?

A. I think it must be about 20 or 30 years.

C. Q. Did you count the carabaos which you say Don Joaquin Guzman had?

A. Yes sir, because I always saw them in the pasture.

C. Q. How do you know the boundaries of Joaquin Guzman's land?

A. Yes sir, because he asked permission from the township and from me.

Questions by the COURT:

Q. Did persons who went there to live usually inform some authority thereof?

A. Yes sir.

Q. To what authority did the people who went to Mabantad report, the authority at Cauayan, or that of Angadanan?

A. The authorities at Cauayan.

Q. And is this a custom only or was it by order of the authorities?

A. It was by order of the authorities.

Q. Did you know Doroteo Faustino?

A. No sir.

Q. Did you know Santiago Garcia?

A. No. sir.

165 Q. Did you know Potenciano Hernandez?

A. Neither.

Q. Did you know Marcos Patiño?

A. Neither.

Q. Did you know Potenciano de los Santos?

A. No sir.

Q. Do you know Valentin Bizcarra?

A. No sir.

Q. Do you know Ludovico Bizcarra?

A. Neither.

Q. So the among the old residents and possessors of land where you lived you were only acquainted with Joaquin Gu-man?

A. Yes sir, only Joaquin Guzman and some Tuguegarao people.

Q. And it is because of this that you stated that you knew nothing about the existence of an hacienda called San Luis and La Concepcion?

A. Yes sir, for that same reason.

The witness approves and signs his testimony.

MANUEL DALAUIDAO.

Sworn Testimony of Bruno Dalauidao, Resident of Tagaran, Cauayan, Farmer by Occupation.

Q. How old are you?

A. 47 years.

Q. Are you a relative of Manuel Dalauidao?

A. Yes sir, we are cousins.

Q. Where did your father live?

A. On the Mabantad rancho.

Q. Did you live at Mabantad before?

A. Yes sir, I lived there until I was 25.

Q. When you lived there who was the owner of the Mabantad lands?

89

A. Captain Manuel Dalauidao's father.
Q. Have you any lands at Mabantad?
A. Yes sir.
Q. Who is in charge of them?
A. Mariano Damagan
Q. Did you know Joaquin Guzman?
A. Yes sir.
166 Q. Where did Joaquin Guzman live?
A. In Minanga, Cauayan.
Q. Do you know the boundaries of the land which belonged to Joaquin Guzman?
A. Yes sir.
—. What was the northern boundary?
A. The Cagayan river.
Q. The eastern boundary?
A. The Cornayan.
Q. What does Cornayan mean?
A. Water.
Q. Is it a lake or estuary?
A. It is an estuary.
—. What is the southern boundary?
A. A field.
Q. What is the western boundary?
A. A forest.
Q. Where is the forest?
A. In Andarayan.
Q. Was Joaquin Guzman the abutting owner on the west with the father of Capt. Manuel Dalauidao?
A. Yes sir.
Q. When you left Mabantad at the age of 25 years was Joaquin Guzman still living in Minanga?
A. Yes sir.
Q. Do you know whether Joaquin Guzman at that time had any tenants?
A. Yes sir.
Q. Were there any people already living at Mabantad on lands belonging to Capt. Manuel's father and on the lands which your father occupied when you left Mabantad?
A. Yes sir, there were.
Q. Have you ever known anything about an hacienda called San Luis and la Concepcion?
A. No sir.

The witness approves and signs his testimony.

BRUNO DALAUIDAO.

Document A.

Justice Court of Cauayan.

Copy of a possessory information concerning a lot and a
167 field, which lot is situated within the township and the field is situated in the rancho of Minanga of this township, which

information was taken in this Justice Court at the instance of Don Victor Guzman.

Justice of the Peace, Don Pedro del Rosario.

Attesting witnesses: D. Domingo Damatan and D. Manuel Gannaban.

To the Justice of the peace:

Don Victor Guzman, a native of this town, 33 years of age, married, farmer, with a cedula personal of the 6th class issued by the internal revenue office of this province, No. 231, on January 5th of the present year, respectfully appears and states:

First. I have been possessing quietly and peacefully and without interruption a lot and a field which lot is situated in the centre of this town, and on which stands a house of light material with a cogon roof. The lot is bounded on the north with the lot which was formerly occupied by the barracks of the Civil Guard, which has been destroyed; on the south by a provisional street; on the east by the houses of Jose Damatan, Jose Gammad and Don Hilario Lidoan, and on the West by a high road; it is 66 meters in length by 43 meters in width, and the total value of the property is 100 pesos. I acquired this property by purchase for the amount above mentioned from Dominga Argonza, an inhabitant of this town, in the year 1892; the field is situated in the rancho of Minanga of this jurisdiction, and is bounded on the north by the Conayan estuary; on the east by the houses of Proceso Guzman and
168 Gregorio Bautista; on the south by a field belonging to Teodoro Balusan, and on the west by the Cagayan river. It has a superficial area of 4 hectares, 28 ares and 45 centiares, and its value *id* 100 pesos, 28 years. Second. The said properties are not subject to any incumbrance, liability or easement. Third. I accompany a certificate issued by the secretary of the municipal Board of this town, which shows that I have been possessing the said properties, and that they are not subject to the payment of any tax. Fourth. That as I have no written title by which I can record them in the Register of property I offer testimony upon the statements made in this petition, which will be testified to by D. Antonio Dalauidao and Don Vicente Tamon, citizens and property owners of this town. Therefore, in accordance with Article 391 *et seq.* of the Mortgage Law and other corresponding provisions, I pray your Honor to take the oral testimony offered after hearing the Teniente de Semeteras, citing the owners of adjoining properties, and that after the usual legal proceedings, that the same be approved, and that I be given a certificate in order that the same may be recorded in the property register of this province. This being justice for which I pray

Cauayan, March 1, 1895.

VICTOR GUZMAN.

Don Hilario Lidday, Secretary of the Municipal Board, of the town of Cauayan of the province of Isabela de Luzon.

I Certify that Don Victor Guzman, an inhabitant of this town, with a cedula personal of the sixth class, No. 231, issued by the

Internal Revenue office of this province, the 5th of January
169 of the present year, possesses a building lot and a field which pays no tax as no taxes are at the present time levied upon country property of this class. In witness whereof at the petition of the interested party I issue this certificate countersigned and sealed by the municipal Captain of the said town. This 1st day of March, 1895. O. K. The municipal Captain.

MARCELO RAYMO.
HILARIO LIDDAY.

Court of the Justice of the Peace of Cauayan, March 1, 1895.

Order: Upon reading and filing the preceding petition, with the attached certificate and the exhibition of the personal cedula, let the abutting owners be summoned to appear, together with the witnesses Don Antonio Dalauodao and Don Vicente Tamon, after notice to the teniente de sementeras, for the purpose of taking the testimony offered. So ordered and signed by the Justice of the Peace, to which we certify.

PEDRO DEL ROSARIO.
DOMINGO DAMATAN.
MANUEL GANNABAN.

Service of Notice on Petitioner.

Thereupon, we the attesting witnesses having before us Don Vicente Guzman, notify him of the preceding order by reading it to him and giving him a literal copy thereof, and he thereupon acknowledges service, and signs, to which we certify,

VICTOR GUZMAN.
DAMATAN.
GANNABAN.

Notification to the Teniente de Sementeras.

Thereupon we the attesting witnesses having before us Don Narciso Mendoza, teniente de sementeras, notify him of the preceding
order, reading it to him verbatim, whereupon he acknowl-
170 edged service and signed, to which we certify.

NARCISO MENDOZA.
DAMATAN.
GANNABAN.

Notification to Don Jose Damatan, Abutting Owner.

In Cauayan, March 2nd, 1895. We the attesting witnesses, having before us Don Jose Damatan, the abutting owner and proprietor of a property adjoining that which is the object of this proceeding, notify him of the foregoing order, giving him a literal copy thereof with a statement of the case to which it refers, and citing him in a

proper manner for such purposes as may be convenient to him, whereupon he acknowledged this service and stated that he had no objection whatever to the petition of Don Vicente Guzman, and signed, to which we certify.

JOSE DAMATAN.
DAMATAN.
GANNABAN.

Notification to Jose Gammad, Abutting Owner.

In Cauayan, 2nd of March, 1895, we the attesting witnesses having before us the abutting owner Jose Gammad, the owner of the property adjoining that which is the object of this proceeding, notified him of the preceding order by giving him a literal copy thereof, with the statement of the matter to which it refers, and summoned him in due form for such purpose as he might deem convenient, whereupon he acknowledged this notification, and stated that he has no objection whatever to the request of Don Victor Guzman, and signed, to which we certify.

JOSE GAMMAD.
DAMATAN.
GANNABAN.

171 *Notification to Don Hilario Liddan, Abutting Owner.*

In Cauayan, 2nd March, 1895, we the attesting witnesses, having before us the abutting owner Don Hilario Liddan, the owner of the property adjoining that which is the object of this proceeding, notified him of the preceding order by giving him a literal copy thereof, with a statement of the matter to which it refers, and summoned him in due form for such purpose as he might deem convenient, whereupon he acknowledges this notification and stated that he has no objection whatever to the request of Don Victor Guzman, and signed, to which we certify.

HILARIO LIDDAN.
DAMATAN.
GANNABAN.

Notification to Proceso Guzman, Abutting Owner.

In Cauayan, 2nd March, 1895, we the attesting witnesses having before us the abutting owner Proceso Guzman, the owner of the property adjoining that which is the object of this proceeding, notified him of the preceding order by giving him a literal copy thereof, with a statement of the matter to which it refers, and summoned him in due form for such purpose, as he might deem convenient, whereupon he acknowledged this notification, and stated that he has no objection whatever to the request of Don Victor Guzman, and signed, to which we certify.

PROCESO GUZMAN.
DAMATAN.
GANNABAN.

Notification to Gregorio Bautista, Abutting Owner.

In Cauayan, 2nd March, 1895, we the attesting witnesses having before us the abutting owner Gregorio Bautista, the owner of
172 the property adjoining that which is the object of this proceeding, notified him of the preceding order by giving him a literal copy thereof, with a statement of the matter to which it refers, and summoned him in due form for such purpose, as he might deem convenient, whereupon he acknowledged this notification and stated that he has no objection whatever to the request of Don Victor Guzman, and signed, to which we certify.

GREGORIO BAUTISTA.
DAMATAN.
GANNABAN.

Notification to Teodoro Balusan, Abutting Owner.

In Cauayan, 2nd of March, 1895, we the attesting witnesses having before us the abutting owner Teodoro Balusan, the owner of the property adjoining that which is the object of this proceeding, notified him of the preceding order by giving him a literal copy thereof, with a statement of the matter to which it refers, and summoned him in due form for such purpose, as he might deem convenient, whereupon he acknowledged this notification, and stated that he has no objection whatever to the request of Don Victor Guzman, and signed, to which we certify.

____ ____.
DAMATAN.
GANNABAN.

Testimony of Antonio Dalauidao.

In Cauayan, March 2, 1895. The Justice of the Peace, together with the attesting witnesses having opened the Court, the witness above named appeared before him and stated that he was an Indian, a native and inhabitant of this town, 40 years of age, with a cedula personal of the 14th class, issued gratis as he was the present
173 Cabeza de Barangay, not exhibited at the present time as it has not yet been issued by the Internal revenue office of this province, married, and showing a receipt for the said tax for the last quarter, and having first duly sworn to tell the whole truth touching matters upon which he shall be interrogated, testified as follows:

Asked whether he was within any of the disqualifications of the law, replied that he is not.

Asked if he knows that Victor Guzman is the owner of two parcels of land situated the first, a building lot, in this town, and the second on the rancho of Minanga; said that — knows that the matters contained in the question are true, because he has always observed that

the said Guzman has, with respect to these properties, exercised the rights and performed the duties of a true owner.

Asked how long the petitioner had been in possession of the properties referred to in the preceding question, he said that the first property has been possessed by him about three years and the second some 28 years more or less.

Asked if he knows from whom the petitioner acquired the said properties, he said that he had always observed the petitioner Victor Guzman cultivating the field continually and that the lot was purchased by him from Domingo Argonza.

The foregoing having been read to him he ratified its contents, and signed with the Judge, to which we certify,

PEDRO DEL ROSARIO.
ANTONIO DALAUIDAO.
DOMINGO DAMATAN.
MANUEL GANNABAN.

174 *Testimony of Vicente Tamon.*

In Cauayan, March 2, 1895, before the Justice of the Peace and the attesting witnesses personally appeared the person above named, who stated that he was an Indian, a native and inhabitant of this town, of age, widower, and farmer, with cedula personal of the 6th class, issued by the Internal revenue office of this province, and a receipt for the said tax for the last quarter of the present year, and being first duly sworn to tell the whole truth touching matters upon which he shall be interrogated, testifies as follows:

Asked whether he was within any of the disqualifications of the law, replied that he is not.

Asked if he knows that Victor Guzman is the owner of two parparcels of land, situated the first, a building lot, in this town, and the second on the rancho of Minanga; said that he knows that the matters contained in the question are true, because he has always observed that the said Guzman has, with respect to these properties, exercised the rights and performed the duties of a true owner.

Asked how long the petitioner had been in possession of the properties referred to in the preceding question, he said that the first property has been possessed by him about three years and the second some 28 years more or less.

Asked if he knows from whom the petitioner acquired the said properties, he said that he had always observed the petitioner Victor Guzman cultivating the field continually and that the lot
175 was purchased by him from Domingo Argonza.

The foregoing having been read to him he ratified its contents, and signed with the Judge, to which we certify.

PEDRO DEL ROSARIO.
VICENTE TAMON.
DOMINGO DAMATAN.
MANUEL GANNABAN.

Order: That the record be delivered to the teniente de sementeras for his opinion.

PEDRO DEL ROSARIO.
DOMINGO DAMATAN.
MANUEL GANNABAN.

Notification to the Teniente de Sementeras.

Thereupon we the attesting witnesses having before us Don Narciso Mendoza the teniente de sementeras, notified him of the preceding order, and in acknowledgement of such notification he signed, to which we certify.

NARCISIO MENDOZA.
DAMATAN.
GANNABAN.

NOTE.—Be it remembered that on this same date we delivered to the teniente de sementeras, in compliance with the order above.

Witness our signatures.

NARCISIO MENDOZA.
DAMATAN.
GANNABAN.

To the Justice of the Peace:

The teniente de sementeras states that having carefully examined this record of possessory information solicited by the petitioner, and finding no contradictions, either in the testimony of the adjoining owners or that of the witnesses who testified from their own knowledge in compliance with the requirements of article 1963 of the law for the validity of these informations, I am of the opinion that the petition presented by Victor Guzman should be approved, or such action taken as may appear best to you.

176 Cauayan, March 3, 1895.

NARCISO MENDOCZA.

Record of Return.

Be it remembered that this third day of March, 1895, this record was returned by the teniente de sementeras with his opinion, and that at the same time the Justice of the Peace was informed thereof. So certified.

DAMATAN.
GANNABAN.

Justice Court of Cauayan.

March 4, 1895.

Order: Upon reading the above record, it appearing that Victor Guzman has presented a petition for the taking of testimony con-

cerning his possession of a building lot and a field, which lot is situated in the centre of this town, and upon which stands a house of light material and a cogon roof, measuring 66 meters in length, 43 in width, bounded on the north by a lot on which the barracks of the guardia civil, now destroyed, used to stand; on the south by a provisional street; on the east with houses belonging to Jose Damatan, Jose Gammad and Don Hilario Liddan, and on the west by the high road, the total value of the property being 100 pesos, the field is situated in the rancho of Minanga and has a superficial area of four hectareas, 28 areas and 45 centiares, and is bounded on the north by the Conayan estuary, on the east with houses belonging to Proceso Guzman and Gregorio Bautista, on the south with a field belonging to Teodoro Balusan and on the west by the Cagayan river, value 100 pesos; the first, to-wit, the lot, was purchased 3 years ago from Dominga Argonza, and the second, to-wit, the field, was acquired by occupation 28 years ago.

177 Whereas in the testimony of the abutting owners and that of the witnesses no contradictions appear, but on the contrary the properties were identified in due form and the witnesses have testified of their own knowledge that the statements made by the petitioner are true, and Whereas the lands referred to are not subject to taxation as no taxes are at present levied on rustic property. And Whereas the petition was accompanied by a certificate of the secretary of the board, o. k'd by the municipal Captain of this town to the effect that the lands referred to are not liable to taxation.

Further considering that the petition has not been contradicted or opposed by any person, and that the teniente de sementeras in his opinion states that it may be approved, and Considering that all the formalities prescribed by the Mortgage Law and the Law of Civil Procedure for the admission and approval of these informations have been complied with, in view of articles 390 and 393 of the Mortgage Law, 436 to 437 of the regulations for its execution and articles 1966 and 1967 of the Code of Civil Procedure, and in conformity with the opinion of the teniente de sementeras.—Don Pedro del Rosario, Justice of the Peace of this town, said that he should approve and does approve the information presented, and directs that this record, with the documents attached, be returned to the party in interest, in order that he may obtain its inscription

178 in the Registry of Property of this province, without prejudice to third persons with better rights.

So approved and signed by the Justice of the Peace, to which we certify.

PEDRO DEL ROSARIO.
DOMINGO DAMATAN.
MANUEL GANNABAN.

Notification to the Party in Interest.

Thereupon we the attesting witnesses having before us Don Victor Guzman notify him of the preceding order, by reading it to him,

and giving him a literal copy thereof, whereupon he acknowledged said notification and signed, to which we certify.

VICTOR GUZMAN.
DAMATAN.
GANNABAN.

Notification to the Teniente de Sementeras.

Thereupon we the attesting witnesses having before us Don Narciso Mendoza, notify him of the preceding order, which notification he acknowledged and signs with us, to which we certify.

NARCISIO MENDOZA.
DAMATAN.
GANNABAN.

Record of Delivery.

Be it remembered that this fourth day of March, 1895, we delivered this record consisting of 14 pages to the petitioner Don Victor Guzman, for registration. So certified.

DAMATAN.
GANNABAN.

Certificate of Copy.

The present copy extended on fifteen pages of common paper, sealed and rubricated by me agrees with the original, presented to this register, and filed under No. 143 in the files of public documents for the year 1895, and recorded on the 31st of May of the said year in volume 1 of the municipality of Cauayan, folio 179 9, property No. 6, and folio No. 11 property No. 7, both first inscriptions. In witness whereof I have hereunto put my hand this 29th day of October, 1896, Ilagan.

LUIS MERINO.

I certify that this document is a true copy of its original which was returned to me.

ROBERT LIENAU.

Signed and sworn to before me this 8th day of January, 1903.

FRANCISCO TACCAD.

Document B.

Rustic property: A tract of land partly under cultivation consisting of 60 parcels brought into one tract, and which constitutes the agricultural haciendas styled "San Luis" and "La Concepcion," situated in the townships of Cauayan and Angadanan of this province of Isabela de Luzon, bounded on the north with the arrable land of Joaquin de Guzman, on the north-east by public lands and

the ranchos of Mabantad, Carabatan and Andarayan, on the west throughout its whole extent by the Rio Grande, on the south by the said river and public lands, on the east by the Cornayan estuary and Government lands. It has a superficial area of 3956 hectares, 25 areas and 28 centiares. The property appears to be free from incumbrance, according to the register. Its value is 80,000 pesos as appraised in the title. The Cia. General de Tabacos de Filipinas acquired the ownership of this property from Don Antonio Pascual Casal in the year 1887 as appears from a public instru-
180 ment executed in Manila before the notary public Don Ricardo Saavedra, the 31st of October, 1887, by Don Jose Clavet as executor of D. Antonio Pascual Casal and curator of his minor children, in which instrument after accrediting the representatives capacities mentioned, it is recited that D. Antonio Pascual Casal formed a partnership with D. Ernesto Polack for the purpose of engaging in the tobacco business in these Islands. Señor Polack to have a fourth part of the business, which fourth part be ceded to the Cia. General de Tabacos when that Company established itself in the Philippine Islands, to which Company Señor Casal sold his three-fourths interest, stipulating as the consideration of this sale the sum of $200,000 and 1.000 original shares of stock, Señor Casal assuming the obligation of acquiring the ownership of 9230 hectares of land in the province of Isabela, which had been denounced by means of his agents, at his expense, the payment to be effected at the time of the execution of the title deeds in favor of the Company. That the said lands having been denounced, acquired by Señor Casal, and the deeds executed for the lands constituting the haciendas of Santa Isabel, San Antonio and San Rafael on the 18th and 23rd of December, 1883, before the notary Miguel Torres, which instruments were executed by Antonio Pascual Casal in favor of the Cia. General de Tabacos, Señor Casal died before executing the instruments of conveyance of the haciendas styled La Concepcion and San Luis, situated in the townships of Cauayan and Angadanan, privince of La Isabela, and by virtue of the fifth clause of the
181 will executed by Señor Casal on the 5th of January, 1884, before the notary Miguel Torres, the executor of Antonio Pascual Casal and curator of his minor children, took the necessary steps for the execution of the conveyances of the said haciendas, which however were not carried into effect, because the Cia. General de Tabacos endeavored to obtain a rescission of the contract on the ground of lesion; a compromise having been effected between both parties it was subjected to judicial approval owing to the interest of the minors, and having been approved the instrument to which we refer was executed, in the 6th clause of which Señor Clavet declares that the lands composing the haciendas of San Luis and La Concepcion are situated and bounded as stated at the beginning of this inscription, and that they have an area of 2902 hectares, 61 areas and 78 centiareas. On the 7th of November and 1 of November, 1887, Jose Clavet in the capacity above mentioned, in the presence of Ricardo Saavedra, notary public of Manila, executed

an instrument of amplification of the former instrument in favor of the Cia. General de Tabacos de Filipinas represented by Don Jose Gisbert as General Manager, in which he ratified all that had been done theretofore and recited, among other things, that the superficial area of the haciendas of San Luis and La Concepcion is 3956 hectareas, 25 areas and 28 centiareas, and that the consideration for the sale is 80,000 pesos; that he received at the time of the execution of the instrument a check for $70872.82—⅝ balance due from the Company to the estate of Señor Casal, ratifying with all the necessary requisites the conveyance of the haciendas of
182 San Luis and La Concepcion to the Cia. General de Tabacos. By virtue thereof I record the ownership of this property in favor of the Cia General de Tabacos de Filipinas, a Corporation domiciled in Barcelona, with a special delegation in these Islands as above stated. All of which appears in the first copies of the instruments mentioned, issued in Manila at the date of their execution, to-wit, the 31st of October and 21st of November, 1887, by the notary public, Ricardo Saavedra, which instruments were presented in this registry at 9 a. m. September 16th of the current year, as appears from the entry No. 2163, folio 245, over volume 2 of the day book. And the foregoing being in conformity with the document to which I refer, I sign this certificate in Ilagan, 17th of September, 1898. Juan G. Rodrigo, Fees 25 pesos. Paragraph 7 of the tariff.

I certify that the foregoing is a true copy from the registry of property in the province for the municipality of Cauayan.

V. B. STEWART,
Provincial Treasurer of Isabela.

Document C.

Rustic property: A tract of land partly under cultivation consisting of 60 parcels brought into one tract, and which constitutes the agricultural haciendas styled "San Luis" and "La Concepcion," situated in the townships of Cauayan and Angadanan of this province of Isabela de Luzon, bounded on the north with the arable lands of Joaquin de Guzman, on the north-east by public lands and the ranchos of Mabantad, Carabatan and Andarayan, on the west throughout its whole extent by the Rio Grande, on the south
183 by the said river and public lands, on the east by the Cornayan estuary and Government lands. It has a superficial area of 3956 hectares, 25 ares and 28 centiares. The property appears to be free from incumbrance, according to the register. Its value is 80,000 pesos as appraised in the title. The Cia. General de Tabacos de Filipinas acquired the ownership of this property from Don Antonio Pascual Casal in the year 1887 as appears from a public instrument executed in Manila before the Notary Public Don Ricardo Saavedra, the 31st of October, 1887, by Don Jose Clavet as executor of D. Antonio Pascual Casal and curator of his minor children, in which instrument after accrediting the representative

capacities mentioned, it is recited that D. Antonio Pascual Casal formed a partnership with D. Ernesto ..... of tobacco in these Islands. Señor Polake to have a fourth part of the business, which fourth part he ceded to the Cia. General de Tabacos when that Company established itself in the Philippine Islands, to which Company Señor Casal sold his three-fourths interest stipulating as the consideration of this sale the sum of $200,000 and 1,000 original shares of stock. Señor Casal assuming the obligation of acquiring the ownership of 9230 hectares of land in the province of Isabela, which had been denounced by means of his agents, at his expense, the payment to be effected at the time of the execution of the title deeds in favor of the Company. That the said lands having been denounced, acquired by Señor Casal, and the deeds executed for the lands constituting the hacienda of Santa Isabel, San Antonio and San Rafael on the 18th and 23rd of December, 1883, before
184 the notary Miguel Torres, which instruments were executed by Antonio Pascual Casal in favor of the Cia. General de Tabacos, Señor Casal died before executing the instruments of conveyance of the haciendas styled La Concepcion and San Luis, situated in the townships of Cauayan and Angadanan, province of la Isabela, and by virtue of the fifth clause of the will executed by Señor Casal on the 5th of January, 1884, before the notary Miguel Torres, the executor of Antonio Pascual Casal and curator of his minor children, took the necessary steps for the execution of the conveyances of the said haciendas, which however were not carried into effect, because the Cia. General de Tabacos endeavored to obtain a rescission of the contract on the ground of lesion; a compromise having been effected between both parties it was subjected to judicial approval owing to the interest of the minors and having been approved, the instrument to which we refer was executed, in the 6th clause of which Señor Clavet declares that the lands composing the haciendas of San Luis and La Concepcion are situated and bounded as stated at the beginning of this inscription, and that they have an area of 2902 hectares, 61 ares and 78 centiares. On the 21st of November 1887, Jose Clavet in the capacity above mentioned, in the presence of Ricardo Saavedra, notary public of Manila, executed an instrument of amplification of the former instrument in favor of the Cia. General de Tabacos de Filipinas represented by Don Lope Gisbert as General Manager, in which he ratified all that had been done theretofore and recited, among other things, that the superficial area of the haciendas de San Luis and La Con-
185 cepcion is 3956 hectares, 25 ares, and 28 centiares, and that the consideration for the sale is 80,000 pesos; that he received at the time of the execution of the instrument a check for $70872.82 —⅝ balance due from the Company to the estate of Señor Casal, ratifying with all the ..... haciendas of San Luis and La Concepcion to the Cia. General de Tabacos. By virtue thereof I record the ownership of this property in favor of the Cia. General de Tabacos de Filipinas, a Corporation domiciled in Barcelona, with a special delegation in these Islands as above stated. All of which appears in the first copies of the instruments mentioned, issued in Man-

ila at the date of their execution, to-wit, the 31st of October and 21st of November, 1887, by the notary public, Ricardo Saavedra, which instruments were presented in this registry at 9 a. m. September 16th of the current year, as appears from the entry No. 2163, folio 245 over, volume 2, of the day book. And the foregoing being in conformity with the document to which I refer, I sign this certificate in Ilagan, 17th of September, 1898, Juan G. Rodrigo. Fees 25 pesos. Paragraph 7 of the tariff.

I certify that the foregoing is a true copy from the registry of property in this office for the municipality of Angadanan.

V. B. STEWART,
Provincial Treasurer of Isabela.

186 Heading and Caption.

The plaintiff, in obedience to the order of the Court to present a written brief, sums up the facts and the result of the evidence taken, and presents its arguments in support of the complaint briefly and concisely in the following terms:

First. With respect to D. Miguel Macias who appeared in this action as representative of the plaintiff Company, he has proved his representative capacity by a copy of a power of attorney he exhibited to this Court and which forms part of the record.

Second. With respect to the corporate existence of the plaintiff Company, styled, "Compañia General de Tabacos de Filipinas," this has also been proven in the record by the exhibition of the by-laws and regulations of the said Company, some of which have been tra-scribed for attachment to the record.

Third. The facts alleged in paragraph 3 of the amended complaint for a better understanding may be stated separately, and divided into various sections as follows:

(a) That the Plaintiff Company is the owner of certain lands situated in the townships of Cauayan and Angadanan of this province, denominated "hacienda de San Luis and La Concepcion."

The attorney for the defendants does not specifically deny this fact. He has simply stated in paragraph 1 of his answer *"that the so-called hacienda of San Luis and La Concepcion, of which the plaintiff Company claims to be owner,"* af-ecting to be ignorant of the fact that the said hacienda is the property of the plaintiff
187 Company, when as a matter of fact in a suit concerning various portions of the same estate between the Tabacalera Company and Nicolas Lacaste and others, the said attorney had an opportunity to read and examine the title deeds and the plan of the said hacienda, and to become convinced by the judgment rendered by the Honorable J. H. Blount, Jr. on May 2nd last, when the said title deeds fully established the rights of the said Tabacalera Company to the lands comprising the said hacienda of San Luis and La Concepcion. The documents above indicated are those numbered 1, 2, 3, 4, 5, 6 and 7, which consist in as many title deeds issued by the Intendencia General de Hacienda de Filipinas, October 20, 1882, in favor of Doroteo Faustino, Santiago Garcia, Potenciono Hernan-

dez, Marcos Patiño, Potenciano de los Santos, Valentin Bizcarra and Ludovico Bizcarra respectively, and which are attached to the deeds of sale in favor of Antonio Pascual Casal; document 8, which is instrument No. 436, executed by Clavet on behalf of the testamentary estate of Casal, October 31st, 1887, selling the hacienda in question to the Compañia General de Tabacos de Filipinas; document No. 9, which is instrument No. 456, an amplification and explanation of the preceding document executed by the said Clavet on the 21st of November, 1887, in favor of the Compañia Tabacalera, and in which it was said that the hacienda de San Luis and La Concepcion purchased by the Tabacalera had a superficial area of 3956 hectares, 25 ares, 28 centiares; document No. 10, which is a plan of the same lands, styled San Luis and La Concepcion, signed by the notary Ricardo Saavedra, who, at the foot of the same, certified on
188 Nov. 16, 1889, that a copy of the said plan had been attached to the appendix of his protocol of that year on folio 198, as referring to the instrument executed before him October 31, of the said year.

By the documents referred to it is proven that the 60 persons whose names appear on the plan denounced and obtained from the state, the lands denominated at the present day the hacienda de San Luis and La Concepcion; and the state being absolute owner as a juridical entity of lands in the Philippines and in use of the right pertaining to all persons having the full ownership, of a thing to dispose of it at will, conveyed the ownership of the said lands after the payment by the grantee to the treasury of the consideration.

And the lands having been purchased by the Tabacalera Company, as shown by documents 8, 9 and 10, it is unquestionable that the said Company has acquired and is at the present time owner thereof.

The treaty of Paris, signed December 10, 1898, and ratified April 11, 1899, in articles 8 and 9 recognizes the property of Spaniards in the Philippines and that of juridical entities; consequently, the plaintiff Company under the American sovereignty has the same as before, the ownership of the said hacienda de San Luis and La Concepcion.

From the statements made at the trial and from the evidence offered and introduced, we assume that the attorney for the defendants will endeavor to attack the 60 original deeds from the
189 State as void, upon the ground that it does not appear that they were subscribed in the registry book of the Political Military Government then existing; that the subscription in the registry of property is also void because it was made on the 17th of September, 1898, that is, two days after the revolutionary forces took possession of Ilagan, the capital of this province.

To the first objection, if it should be made, we answer that the only person entitled to plead such nullity would be the Government or its lawful representative, but not the defendants; that the period of four years at the expiration of which the action of nullity is barred, has expired long ago; that the contract of bargain and sale being bilateral, and the Government not having returned the price of the 60 parcels, it is not just that the Company which purchased the said lands should be despoiled thereof, more especially because

the American Government has clearly recognized the ownership thereof by the said Company by inscribing the hacienda in the books of the Forestry Department as appears from document No. 11.

Upon the second point the plaintiff will answer that as the American Government has never recognized the legality of the Filipino or Revolutionary Government, and on the other hand the Spanish registrar not having received an order suspending him on that date there is no reason to doubt that he continued to be such registrar, and consequently, that his official acts as such were legal and valid.

190 *(b) That the area of the said hacienda is 3956 hectares, 25 ares and 28 centiares.*

This appears from document No. 9, that is, deed No. 455, and it also appears from the plan of the hacienda, document No. 10, as the sum total of the superficial area of all the 60 parcels of which the hacienda de San Luis and La Concepcion consists.

The attorney for the adverse party in paragraph 4 of his answer denies that this is the real superficial area of the hacienda in question. But in his anxiety to find defects in the title deeds he exhibited two certificates, inscriptions of the said hacienda in the books of the registry of property corresponding to Cauayan and Angadanan, for the purpose of utilizing their defects against the right alleged by the party plaintiff; but in our opinion he did not and can not attain his purpose, but said documents constitute rather decisive proof contrary to his denial that the superficial area of the hacienda is 3956 hectares, 25 ares and 28 centiares.

This question, which would appear to be an insignificant one, must be considered by the opposing counsel as of great importance, as, for the purpose of settling the question he called for the cashier of the Tabacalera Company, Don Rafael Rodriguez, to whom he presented the following remarkable problem: That the instrument No. 8 in the record, which was exhibited to the witness, says that the hacienda of San Luis and La Concepcion consists of 60 parcels and that the lands of both haciendas together make a total of 2902 hectares, 61 ares and 78 centiares, while the plan and document No. 9 in-

191 dicate that the said hacienda has an area of 3956 hectares, 25 ares and 28 centiares, that is to say, 1054 hectares, 63 ares and 50 centiares more than the area indicated in the said document No. 8, without making any explanation as to this variation.

The Cashier, notwithstanding the fact that he is accustomed to resolving problems as difficult or mor- difficult than this one, cannot give a satisfactory solution of the pr-blem of the hectares with the skill worthy of a better fate, but simply answered that he knew nothing about the matters referred to in the question, thus confirming again the adage "an ignoramus can ask more questions than a sage can answer."

The plaintiff, to satisfy the curiosity of the defendant's attorney, gives him the solution of a problem by saying that if he will take the trouble to look at documents 8 and 9 he will see that the Tabacalera Company at the end of the year 1883 purchased Señor Casal's interest in the sixty parcels, which make up the hacienda of San Luis and La Concepcion. When Casal died, Señor Clavet, on behalf

of the testamentary estate, executed instrument No. 436—exhibit 8—solemnly declaring that the lands which composed the said hacienda were the property of the Compañia Tabacalera, and as the transfer of some of the parcels had not been effected on that date, the instrument only showed an area of 2902 hectares, 61 ares and 78 centiares. But on the 21st of November, 1887, instrument No. 456 was executed—exhibit 9—which is explanatory of the former instru-
192 ment and all those executed on the 18th and 23rd of December, 1885, and in it Señor Clavet stated in paragraph D of clause 9 "that the superficial area of the lands known as San Luis and La Concepcion, to which instrument 436 refers, is 3956 hectares, 25 ares and 28 centiares.

(c) That the said hacienda is bounded on the north by the rio Grande de Cagayan and lands belonging to Victor Guzman, at the present time in the possession of the latter's widow, but at the present time the wife of Nicolas Lacaste; on the east by the Cornayan estuary and government lands; on the northeast the public lands and part of the ranchos of Mabantad, Carabatan and Andarayan, and on the west in all its extension by the rio grande de Cagayan.

The attorney for the defense, in answering the complaint in paragraphs 1, 2 and 3 of his answer denies the truth of the statemente as to the north and north-east boundaries, but has neglected to inform us what are the true boundaries.

For the purpose of justifying the denial he exhibited at the trial the certificates issued by the Provincial Treasurer, entries in the books of the Registry of Property of Cauayan and Angadanan, in which certificates although the superficial area appeared to be exactly 3956 hectares, 25 ares and 28 centiares, it is, nevertheless, stated that the boundaries to the hacienda are on the north of the lands of Joaquin Guzman, on the north-east of the public lands and the ranchos of Mabantad, Carabatan and Andarayan; on the east in its whole extent by the rio Grande de Cagayan; on the south by the said river and public lands, and on the east by the Cornayan
193 estuary and Government lands. He also cites in support of his denial document No. 8 which was precisely the document in which, by a slip of the person who wrote it out, the mistake was made as to the northern boundary by omitting the Cagayan river; and this involuntary omission of one of the boundaries caused the registry of property to fall into error in making an extract of the deed. It follows then that the entries in the books of the registry of property can not be regarded as distinct documents from instrument 436 because they are nothing more than an extract of its contents. The attorney for the defendants judging from statements made by him, tries to exaggerate the importance of the entries in the books of the registry of Cauayan and Angadanan by disregarding the other documents presented at the trial and will probably support this theory by citing article 315 of the code of civil procedure, which reads as follows: "Entries in public or other official books or records, made in the performance of his duty by a public officer of the Philippine Islands, or by another person in these Islands in performance

of the duties especially enjoined by law, are *prima facie* evidence of the facts therein stated."

What is this *prima facie* evidence? Article 280 of the same code gives us the following answer: "*Prima facie* evidence is "that which suffices for the proof of a particular fact until contradicted and overcome by other evidence."

And now, what conclusion are we to draw from the articles
194 above quoted with respect to the contention of opposing counsel? That as the said entries in the books of the registry of property do not entirely conform by reason of the omission of a boundary to the plan of the hacienda and the original title from the State with respect to the northern boundary, the certificates of the entries cannot constitute *prima facie* evidence to establish the real boundaries of the said hacienda of San Luis and La Concepcion.

In view of the fact that the opposing counsel has denied the truth and exactitud- of the boundaries on the north and west of the said hacienda as stated in the complaint, the undersigned begs to draw the attention of the Court to the following demo-stration, which leaves no room for doubt.

For this purpose we must establish the following facts:

First. That the defendant did not formally deny the truth and exactitud- of what appears in the plan.

Second. That he did not deny the truth of the contents of the original titles from the state, Nos. 1, 2, 3, 4, 5, 6 and 7.

Third. That he did not formally deny the truth and exactitud- of the contents of the documents 8 and 9.

Fourth. That he did not deny that the number of the parcels was sixty or the superficial area of each one of them or their respective boundaries.

Fifth. That he did not deny that the Company had purchased all the sixty parcels.

Sixth. That he did not deny that the sum total of the
195 different partial parcels was the sum total which appears in the plan and in document No. 9, to-wit, 3956 hectares, 25 ares and 28 centiares.

Seventh. Neither will he deny nor can he deny that he who buys all the parts buys the whole, and that the result of an operation of addition is equal to the sum total of the units added.

The foregoing premises having been established, now let us endeavor to prove the conclusion.

For this purpose let us do what every man must do who desires to ascertain the truth.

If a copy, a transcript or an extract are not exact what is it that one must do to correct and rectify the errors but to look for the original to compare its contents with the copy, transcript or extract?

Let us therefore, examine these orig-nal titles from the state, and they will show us the following:

The title to parcel 1 on the plan in favor of Doroteo Faustino, is as follows: Bounded on the north by the Rio Grande de Cagayan; on the east by public lands denounced by D. Santiago Garcia, on the

south by similar lands denounced by Ponciano Hernandez and on the west by a forest of the Mabantad rancho.

The title to parcel No. 2 in favor of Santiago Garcia, reads as follows: Bounded on the north by the Rio Grande de Cagayan, on the east by lands cultivated by Joaquin Guzman, on the south by lands denounced by Ponciano Hernandez and Marcos Patiño and on the West by lands denounced by Doroteo Faustino.

196 The title to parcel No. 3, in favor of Potenciano Hernandez, reads as follows: Bounded on the North by land denounced by Santiago Garcia, on the east by land denounced by Marcos Patiño, on the south by land denounced by Potenciano de los Santos, and on the west by forests of the rancho of Mabantad.

The title to parcel No. 4 in favor of Marcos Patiño, at Cornayan, reads as follows: Bounded on the south by the Rio Grande de Cagayan and land cultivated by Joaquin Guzman, and by another piece of public land denounced by Santiago Garcia. On the east by the Cornayan estuary, on the south by lands denounced by Potenciano de los Santos, and on the west by lands denounced by Ponciano Hernandez.

The title to parcel No. 5 in favor of Potenciano de los Santos, reads as follows: Bounded on the north by lands denounced by Ponciano Hermandez and Marcos Patiño, on the east by the Cornayan estuary, on the south by lands denounced by Valentin Bizcarra, and on the west by the forest of the Carabatan rancho.

The title to parcel No. 6 in favor of Valentin Vizcarra, reads as follows: Bounded on the north by vacant lands, denounced by Potenciano de los Santos, on the east by the Cornayan estuary, on the south by vacant lands denounced by Ludovico Bizcarra, and on the west by the forest of the Carabatan rancho.

The title to parcel No. 7 in favor of Ludovico Bizcarra reads as follows: Bounded on the north by lands denounced by Valentin Bizcarra, on the east by the Cornayan estuary, on the south by

197 lands denounced by Bonifacio Bizcarra, and on the West by the forest of the Carabatan rancho.

It is to be observed that we have not introduced the original titles of the other parcels because they are not the object of this litigation.

It follows, therefore, that the hacienda mentioned is bounded on the North as indicated in the title deeds to parcels 1, 2 and 4, in addition to the lands of Joaquin Guzman, which includes parcels 2 and 4 as appears from the titles and as also appears from the plan. Therefore, it is clearly demonstrated that on the north the hacienda is bounded by the Rio Grande de Cagayan and by Joaquin Guzman's lands. For a better understanding it should be stated that the lands of Joaquin Guzman are the same lands as those of his son, Victor Guzman, which is stated in the complaint. On the northeast the line is indicated by the title deeds to parcels 1, 3, 5, 6 and 7, of which the first two are bounded on the west by the Mabantad forests, and the latter three by the Carabatan forests. Tnerefore, taking into consideration the topographical situation according to the plan, it has been fully demonstrated that on the north-east the hacienda is bounded by public lands and by the ranchos of Mabantad, Carabatan,

and a little further to the south by Andarayan, that is to say, by lands which, at that time, were still the property of the Government and belonging to the ranchos mentioned

It appears from public documents and has not been denied
198 by the adverse party, that the Tabacalera purchased all the 60 parcels. This is further proven by taking into consideration the fact that the original titles to the said 60 parcels were delivered to it, and that it was also delivered the plan in the record, which shows the 60 parcels with their respective areas, the sum total of which coincides with the area expressed in document No. 9.

If then the Company bought all 60 parcels and all of them abut upon one another, it is evident that the area and boundary of the hacienda must be the result of the union of these parcels. To claim the contrary is to deny the light of the day, to bid farewell to common sense, to act in bad faith.

With respect to the possessory title to the lands of Victor Guzman which shows a superficial area of 4 hectares and a fraction, it must be remembered that this refers to the lands of Joaquin Guzman. I take the liberty of calling the Court's attention to the informalities observed in the record, and the contradictions between its contents and the testimony of Engracia Maraggun, the widow of Victor Guzman, leaving it to you to draw the conclusions.

(*d*) *That the hacienda is duly recorded in the property register of this province.*

This fact is denied by the attorney for the defendants in paragraph 5 of his answer. He does not state expressly why he denies it, but it would appear that he means that the record was not made in accordance with the Mortgage Law; that the signatures of the registrar are different from other signatures of his, and that there was some irregularity in the collection of the fees.

199 We insist that the property was duly recorded, and we take this word as a synonym of "property." To state the matter more clearly it was reco-ded in compliance with the requirements of the Mortgage-Law.

Now, we ask, what is the object of the attorney of the defendants in demanding an ocular inspection of the books of the register? Was it in order that the Judge might pass upon the authenticity of the signatures and the inscription? This may be so, but if so, it is hard to see why counsel for the defendants asked for the certificates of the entries to introduce them in evidence on behalf of the defense, as if he considers them void why did he use certified copies of these entries as proof for the defendants against the plaintiff? What is meant by this valiant erection of an entrenchment for defense with one hand and its destruction by the other?

But let us pass on. Supposing for a moment that the title deeds of the Company were not duly recorded, the trespass committed by the defendants, even if it be considered as the true possession, cannot prejudice the rights of the Compañia General de Tabacos de Filipinas? To convince ourselves of this it is sufficient to read article 394 of the Mortgage Law, paragraph 5, which is as follows: "The inscription of possession shall not prejudice one who has a better right

to the ownership of the property even though his title may not have been recorded."

The inscription of an estate in the registry of property does not give life to void acts, nor does it viciate valid ones. The in-
200 scription is not the title but is a mere requisite concerning certain legal effects of the title. Further, even in the hipothesis, which we do not admit, that the inscription has been erroneously effected, the title of the plaintiff Company does not cease to be legally valid and enforceable.

(*e*) *That the Tabacalera Company purchased it upon the terms expressed in the documents presented to the Court.*

The attorney for the defendants has not denied this fact, and therefore we shall not endeavor to demonstrate it.

Fourth. *That the Cia. General de Tabacos de Filipinas since 1883, when it purchased the property, down to the present time, has been quietly, peacefully and continuously in possession thereof, as owner, with the sole exception mentioned in paragraph 5 of the amended complaint.*

The facts stated in this paragraph have not been denied by the attorney for the defendants.

It is necessary, nevertheless, for us to state that in 1883 the contract of sale of the hacienda in question was perfected, but it was not until 1887 that it was consummated and instruments Nos. 436 and 456 executed. Notwithstanding this, since 1883 the Company commenced exercising acts of owership upon the hacienda, consisting in cutting timber upon the same for the purpose of erecting buildings in Santa Isabel and other towns, as has been proven in the testimony of Señor Macias and other witnesses. The fact that it directed a survey and verification of the boundaries in the years 1888, 1894 and 1901 by Messrs. Basa, Guillen, Andrade and
201 Soriano, and by putting the wire fence on the same without protest from anyone; by having recorded it in the registry of property and in the Forestry department of the Philippine Islands. By the execution of a contract through its representative Señor Nieto, with several persons, for the purpose of breaking and working several portions of the same, (Exhibit 13) and by having paid the land tax on the said hacienda as proven by document No. 12.

The Company's possession of the lands comprising the estate is possession resulting from ownership, that is to say, a right. This possession can not be regarded as of the same effect as a mere trespasser's possession, which is merely a possession *de facto*.

Fifth. *That the above named defendants more than a year ago and less than six years ago, illegally entered upon and continued to wrongfully hold various portions of the said property of the plaintiff Company; which portions together amount to a superficial area of 446 hectares, 79 ares and 4 centiares, as to the fields, and 4 hectares approximately as to the lands on which there are houses and warehouses* are *built, distributed in various parcels distinct and separate from each other, but all within the perimeter of the said described hacienda.*

The number and area of the portions wrongfully possessed by the defendants may be seen in paragraph 5 of the amended complaint

in which they are minutely stated. It is to be observed that the attorney for the defendants had not denied either the number or the area of said portions. Nevertheless, he has denied in paragraphs
6, 7, 8, and 9 of his answer that the portions described in
202 paragraph 5 of the amended complaint are now or at any time have been part of the hacienda of San Luis and La Concepcion, or that they are situated within the boundaries thereof. He has also denied that the plaintiff Company is the owner of the lands in question or any part thereof, or that the Company at any time occupied or possessed the same in whole or in part, or was ever entitled to the possession thereof at any time or in any manner or that it has or at any time has had an interest therein, and finally denies that the lands in question have been wrongfully detained by the defendants.

We consider that the wrongful withholding of possession in this case consists in the effect that the parcels in question are situated within the perimeter of the hacienda of San Luis and La Concepcion, and that the defendants, with the exception of four hereinafter to be named, have occupied them without title and without good faith and against the will of the representatives of the Company.

These facts are proven by the testimony of the expert surveyor, Gregorio Soriano, who verified the boundaries of the hacienda; by the testimony of Luis de la Vega and Ignacio Flores, who testified that the parcels of land in question were within the boundaries and the testimony of the same witnesses and of Don Miguel Macias, who testified that they had spoken to and advised the defendants a number of times and that the latter were well aware that the said lands belonged to the plaintiff Company.

The wrongful withholding of possession consists in this, that notwithstanding the fact that Agustin de la Fuente, Arcadio
203 Tubera alias Tubjas, Eugenio Guzman and Justo Allam signed the contract (Exhibit 13), they failed to perform the contract, and pretend to be unaware of the ownership of the Company, when, as a matter of fact their compromise was recorded in that document, the contents of which have been ratified by Messrs. Nieto, Andrade, Rodriguez and Poo, and it appeared, on the other hand, from the testimony of Messrs. Macias, Nieto and others, that they performed the agreement and only ceased to continue to perform it when the revolution broke out in the year 1898.

Of what importance is it that some of those who made the contract have denied the existence and truth of the contract if witnesses Nieto, Andrade, Rodriguez and Poo confirm it, and no evidence has been offered to impeach the credibility of these Gentlemen? Those who deny that they were present and signed the contract are precisely those whose interest it is to deny it, so that they may appropriate the lands upon which they made this wrongful entry; on the other hand the witnesses Andrade, Rodriguez and Poo were not parties to the contract but simply witnesses and therefore had no interest in either affirming or denying it, and consequently, the force of their testimony is unquestionable, and every man must be presumed to be truthful until the contrary is shown.

The theory of the defence consists, as we conclude, from the evidence offered, in the contention that the lands near the Cornayan estuary cultivated by some of the defendants are not part of the hacienda of San Luis and La Concepcion, but were parts of
204 the lands of Joaquin Guzman; and that the lands at Mabantad cultivated by others, did not form part of the hacienda but are included in those which were formerly possessed by the Captain Manuel Dalauidao, who, according to some of the witnesses, had given them permission to break and cultivate it.

The mere enunciation of this theory is sufficient to show it to be absolutely devoid of merit; that it is puerile and rediculous, and that if no value can be given to it, it must be adverse to the defendants themselves. Let us examine it by parts.

It has been stated in the record an attempt has been made to prove that Manuel Dalauidao possessed the piece of land in Mabantad of great extent, but which no one was able precisely to locate, and that this land it was which was divided up among some of the defendants.

Where are the title deeds of Captain Dalauidao? Why were they not introduced in evidence? How could Capt. Dalauidao give the defendants lands which were within the boundaries of the plaintiff's property, and consequently did not belong to him, but belonged to the company? Has it been proven that Dalauidao ever possessed these lands? No. Has it been proved that he gave or sold them to the defendants? No. But, even if they really had been so given or sold, who is Capt. Dalauidao to give to another that which is not his? What validity would such a gift or sale of these lands have, made by one who is not their owner? What would the possession of the purchasers or donees amount to as opposed to the ownership of the lands by the Cia. Tabacalera? It has also been stated in the
205 record and an attempt has been made to prove, that Joaquin Guzman possessed a large tract of land in Minanga, the true area and limits of which were unknown to his wife Fernanda Corciano, but which several witnesses, not members of the family, were able to specify exactly. This circumstance alone being sufficient to show the falsity of these statements.

Joaquin Guzman's lands could not have the area which the defendants claim that they had. His land was less than one quarter of the area of parcel No. 4 of Marcos Patiño; these lands are the same as those bounded on the north by the rio grande de Cagayan, and which includes parcels 2 and 4 on the east, south and north.

For the purpose of showing the falsity of the testimony of these defendants and witnesses who occupy lands in Minanga, it is sufficient to state that they were 50 in number, and that it is calculated that the parcels which they wrongfully possess have an area of over 100 hectares; on the other hand Joaquin Guzman's lands, in taking into consideration the description in document- 2 and 4 and what appears from the plan, barely contain 4 or 5 hectares, and nevertheless the witnesses who testified at the trial and who stated that they were residents of Minanga, understood that their lands formed part of those of Joaquin Guzman. How can this phenomena be ex-

plained? How did this miracle occur? That the whole was less than the sum of the parts? Verily the age of miracles has not passed.

Upon arriving at this point I can imagine the attorney for the defendant saying "No? "that is not true?" The lands of
206 Joaquin Guzman are not limited only to that which appears on the plan between parcels 2 and 4, they are bigger than that, they occupy all the space which appears on the plan as parcels 1, 2 and 4. This appears from the testimony adduced at the trial, and this is what the opposing counsel, innocently of course, desires us to believe.

For the purpose of refuting this no great effort of mind is necessary. The original title deeds from the state, which are official documents, speak for themselves, and it is unquestionable that the oral testimony of the witnesses is of but little weight against them.

The attorney for the defendants in paragraph 9 of his answer denies that the portions of land described in paragraph 5 of the amended complaint as possessed by the defendants have been wrongfully with-held from the plaintiff Company by the defendants.

In addition to the various reasons above given, I shall demonstrate to the adverse party that there has been an actual wrongful entry and detainer.

The regulation of June 25, 1880, for the purchase of public lands, held without authority by private individuals, prescribed the following in its eighth article: "If the parties in interest do not within the term of one year solicit a composition for the lands which they are wrongfully holding, and after title is granted by the proper authorities fail to perform their undertaking by means of the payment of the corresponding sum to the Treasury, the said Treasury in the use of its right will recover the property of the State and proceed to sell the same at public auction after a proper assess-
207 ment for that part of the estate, which either because of its having been cultivated or because it does not belong to the Forestry Zone, is not desirable for retention by the State as forest lands."

This regulation was modified by Royal order of April 19, 1881, by extending for another year the period referred to in this article. This term, therefore, expired on the 8th of September, 1882.

It does not appear that the defendants have complied with the requirements of this law, for they themselves have testified that they had no title deeds issued by the Government. We must conclude, therefore, that they were and are mere trespassers on the lands they occupy.

The circular of the General Direction of Civil Administration of September 30th, 1881, reads as follows: "Property may be said to be non-existent in the Philippines; with very few exceptions occupation has been the sole means employed for acquiring possession, and this has not been done under the protection of the law or in the exercise of a right, the possessor, although in some cases he was a mere usufructuary as was the case as to lands in the town commons, in others, was a mere trespasser."

If, then, because of the failure to purchase the lands by agreement with the State its possessors were regarded in relation to the State mere trespassers, it is a logical consequence that with relation to the Tabacalera Company, which purchased the property, they are also mere trespassers.

Perhaps the attorney for the defendants will say also pre-
208 scription in favor of some of the defendants exists when they have been in possession for more than ten years. The Court, however, knows how to do justice and unquestionably will hold that there can be no prescription because of the lack of the necessary elements of good faith, and good title, this being a requisite which must be provided whenever the defense of limitation is set up.

Possibly they will endeavor to rely upon article 41 of the Code of Civil Procedure, which fixed ten years' possession as the period of prescription, however such possession may have commenced. If this should be done, permit us to call the attention of the Court to the fact that this code was passed on the first day of October, 1901, and is not applicable to acts performed prior to that date, because the law has no retroactive effect, and although the code says nothing as to the retroactivity of the laws it must be presumed that the Commission presided over by Mr. Taft, which drew the Code, followed strictly the instructions given it on April 7, 1900, by President McKinley, which, among other things, prohibited the enactment of any bill of detainer and *ex post facto* law.

Sixth. *That the plaintiff has been damaged in the sum of* $9,000 *Mex. by reason of the wrongful holding of possession of the lands in question.*

This has also been denied by the attorney for the defense.

These damages consist in the cutting of timber upon the estate for the construction of houses and warehouses and in the dis-
209 turbance which the presence of the defendants on the hacienda causes, preventing others from going there to cultivate the lands; and in failure of the Company to receive the rents, issues and profits of the lands by reason of this detainer since the year 1898.

Seventh. *That the extrajudicial attempt of the representative of the said Company to induce the defendants to vacate the lands in question or to sign a contract was unsuccessful, and that, therefore, the representative of the Company was obliged to bring suit.*

This fact has been proven by the testimony of Messrs. Macias and Flores.

Eighth. For all the foregoing I pray the Court:

1st. To render judgment in favor of the Compañia General de Tabacos de Filipinas for the possession of the said portions of the hacienda of San Luis and La Concepcion, ordering the sheriff to expel all the defendants from the lands in question, and to restore the possession thereof to the representative of the said Company.

2nd. That as trespassers and possessors in bad faith the defendants lose all the tobacco now in the hands of the receiver, and which is the property of the owners of the lands detained, to-wit, the plaintiff.

Company, to whom the same should be delivered by the sheriff with the discharge of the receiver.

3rd. That on account of the bad faith of the defendants they also lose their houses and warehouses, and that the Court hold that the same are the property of the Tabacalera Company, and that as a matter of equity to which the plaintiffs consent the sheriff
210 have the said buildings pulled down for the purpose of delivering the material to the defendants.

4th. That they pay the indicated sum of 9,000 pesos as damages.

5th. That they also pay the costs of suit as well as all costs and expenses occasioned by the incidental motions.

6th. That the preliminary injunction be made perpetual, and the defendants restrained absolutely from disturbing the said Company hereinafter in its possession.

7th. That the injunction thus made perpetual the Court order the cancellation of the bond and direct the Provincial Treasurer to return the 10,000 Mexican pesos to the representative of the plaintiff Company.

8th. That as the term of Court is about to end and the Honorable Judge is about to leave the province, plaintiff prays that the decision determine all matters concerning the execution of the judgment, and prays that in case the judgment should be favorable to the plaintiff Company, and in consideration of the damage which would otherwise be suffered by it, that the Court exercise the power conferred upon him by the last paragraph of Article 144 of the code of civil procedure.

Ilagan December 23, 1902.

VICENTE NEPOMUCENO,
Attorney for Plaintiff.

211 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance, Province of Isabela.

THE COMPANIA GENERAL DE TOBACOS DE FILIPINAS, a Corporation Represented by Don Miguel Macias y Toro, Plaintiff,
vs.
MIGUEL TUPIÑO ET AL., Defendants.

Brief for Defendants.

This is an action for the recovery of possession, in which action the plaintiff, the Compania General de Tobacos de Filipinas seeks to recover the possession of certain lands, situated and existing in the ranchos described and known as "Areable lands of Joquin de Guzman" (Rancho de Minango), the Rancho of Mabantad, the Rancho of Caravatan, the Rancho of Andarayan and a piece of land described as public lands within the township of Cauayan of the Province of Isabela de Luzon, occupied and in possession of the defendants.

For the purpose of showing the right to enter upon an immediate possession of the said areable lands of Joaquin de Guzman and parts of the ranchos of Mabantad, Carabatan and Andarayan, the plaintiff company alleges that it possess a title duly recorded in the propcity register of this province of a certain piece of land styled the "Hacienda de San Luis and La Concepcion." The so called Hacienda San Luis and La Conception of which the plaintiff company claims to be the absolute owner, is described in the documents presented as evidence by the plaintiff company, which documents were admitted and described as Exhibits 8 and 9. It is also described in the records of the books of the property registry of the towns of Cauayan, and Angadanan, where the said documents were recorded.

212 The Hacienda described as being composed of sixty different parcels of land thus purchased from the Spanish Government by the agents of one Antonio Pascual Casal in the years 1882, 1883 and subsequent ones, which sixty parcels thus purchased from the Spanish Government form one single tract of land and constitutes the Hacienda of San Luis and La Concepcion, situated near the townships of Cauayan and Angadanan of the province of Isabela de Luzon, with the following boundaries.

Bounded on the north by the arable lands belonging to Joaquin de Guzman; on the northeast by vacant public lands and the ranchos of Mabantad, Carabatan and Andarayan; on the west along the whole line, by the Rio Grande de Cagayan; on the south by the said river and public lands and on the east by the Canayan estero and Government lands. The superficial area is 2902 hectares, 61 areas and 78 centiares. Exhibit No. 9 presented by the Plaintiff Company as evidence is the "Deed of Amplification" executed on the 27th of November, 1887, *i. e.* 21 days after the execution of the document marked Exhibit No. 8; and it is said that the superficial area of the so called Hacienda of San Luis and La Concepcion is 3956 hectares 25 areas and 28 centiares, without giving any explanation of this variation in the area.

In addition to the said documents marked Exhibits 8 and 9, the plaintiff presented as evidence seven documents, which were admitted and marked Exhibits Nos. 1 to 7 inclusive, which documents are so many distinct title deeds to seven different parcels of land and represents seven of the sixty parcels of land which constitute and form the said Hacienda of San Luis and La Concepcion. The remaining 53 titles alleged to be in possession of the plaintiff company were not exhibited or presented as evidence.

213 *Points.*

(1.)

The documents admitted in evidence and marked Exhibits Nos. 1 to 7 are invalid and void.

Their validity was conditional, as appears from the documents themselves, as each one of them says literally: "This title shall be entered in the central Administration of Government Monopolies, and subsequently presented to the political military Government

of Isabela de Luzon under pain of nullity if the contrary be done so that it may be directed that it be entered in that Government and that possession be given in the ordinary legal form." Also it is true that the deeds were entered in the Central Administration of Government Monopolies, the other conditions have not been performed at any time and the plaintiff has not even made an attempt to prove that anything was done for the purpose of performing said conditions so that the first ef-icacy of the words in the clause referred to are fatal to the validity of the titles.

It appears further more from the testimony of Lucas Mendoza, which has not been contradicted, that in the town of Cauayan no notice was ever published notifying the inhabitants of the said town that the men whose names appear in the said titles, or any other person, had denounced the parcels of land to the Government in those points of the jurisdiction of Cauayan, nor were the persons alleged to have denounced the original parcels ever known in the township of Cauayan.

The sixty so called titles of as many parcels of land denounced by unknown persons, who managed to conceal their actions from the public, who did not present or record their titles in the proper
214 Government office as was directed and who did not even take the trouble to take possession of the land so acquired, are not only null and void but also fraudulent, especially when used with the intention of depriving innocent third persons of their just rights, when they have always refused and resisted the efforts of the plaintiff to make them sign contracts for the purpose of taking their lands and liberty from them, telling them that they were mere contracts of sale of the product of the lands and at an advantageous price in cash.

(2.)

The documents admitted in evidence and marked Exhibits 8 and 9 are null and void.

The first of these two documents is a deed of conveyance to the Compañia General de Tobacos de Filipinas of sixty parcels of land situated in the jurisdiction of the towns of Cauayan, and Angadanan, Province of Isabela de Luzon, alleged to, have been purchased by one Antonio Pascual Casal and his executor, from their original owners, showing that the superficial area of all the said sixty parcels of land is 2902 hectares, 61 ares, and 78 centiares, forming one single tract of land, under the following boundaries:

Bounded on the north by arable lands of Joaquin Guzman on the northeast by public lands, the Ranchos of Mabantad, Carabatan and Andarayan; on the west by the river Rio Grande de Cagayan; on the south by the said river and public lands and on the east by the Conayan Estero and Government lands.

The nullity and invalidity of the sixty deeds and the sixty original parcels having been demonstrated, it is evident that the conveyance to Antonio Pascual Casal, and his Executor, from the latter
215 to the Company General de Tabacos de Filipinas are also invalid. Furthermore, at the time of the execution of these documents, the Compania General de Tabacos de Filipinas had no

legal capacity (even if it has it now) as appears at the foot of the document itself, where the Registrar of property of the Province of Isabela de Luzon states that the title which was presented to the Registrar on the 9th day of March 1895 by the plaintiff company, cannot be regarded by reason of the lack of personality on the part of the corporation (sociedad anonima) and that not even preventative annotation could be made, as the defect was of such a character that it could not be corrected. As defects of this character are those which necessarily result in the nullity of the obligation (mortgage law Article 65) it follows that the document marked Exhibit 8 is void.

The Document marked Exhibit No. 9 is called a "Deed of Amplification" and solely serves to involve the question more rather than clarify it, as it refers to the same sixty parcels of land with the same boundaries as those mentioned in the document marked Exhibit 8; but this document states that the superficial area is 3956 hectares, 25 ares, and 28 centiares, without giving the slightest reason or explanation for the difference of 1054 hectares, 63 ares and 50 centiares which consequently appear in favor of the Compania General de Tabacos de Filipinas. By reason of this detail this document is not only null and void as well as the document marked No. 8 but it is also fraudulent when used with the intention of enforcing it as a valid instrument to the prejudicie of third persons who are made parties to the defendants, as in the present case.

(3.)

The document admitted in evidence and marked Exhibit No. 10 is null and void.

This document represents a map of the so called Hacienda San Luis and La Concepcion and forms a part of the document
216 marked exhibit No. 8 as stated therein, and whose original is attached to the original of the document marked exhibit No. 8 in the protocol of the Notary Public Ricardo Saavedra. This map presented in evidence, as now appears, has no property force whatsoever, for the following reasons:

1. The map was made to be used as a public document and a notice to the public and formed a part of the Notary's instrument describing the situation, boundaries and extension of the lands conveyed by the executor of Antonio Pascual Casal to the Compania General de Tabacos de Filipinas, October 31, 1887; nevertheless, the superficial area of the lands conveyed appears from the map to be 3956 hectares, 25 ares and 20 centiares, while in the document by which the same land was conveyed to the Compania General de Tabacos de Filipinas and of which document this map was made a part, it is said that the superficial area of the land conveyed is 2902 hectares, 61 ares, and 78 centiares. This contradiction is not susceptible of being harmonized in any way and shows a difference of 1054 hectares, 63 ares and 50 centiares in favor of the Compania General de Tabacos de Filipinas.

2. The boundaries on the map have been changed by the Surveyor Soriano, on the northern part, which is one of the most important

boundaries relative to this action and this change has been admitted in his testimony as a witness for the plaintiff company by the Surveyor Soriano himself, who surveyed the Hacienda de San Luis y La Concepcion in December 1901. Such changes in the map which form part of the public instrument, necessarily destroy its validity, if it ever had any, and furthermore might result in leading the Judge who tries the case into error, to the prejudice of third parties or the defendants in this action, although the change made was per-
217 haps not great, the effect is the same as to destroy the map's validity and makes it worthless as evidence.

(4.)

The inscription in the property register alleged by the plaintiff is null and void for the following reasons:

I. The inscription of the alleged title was refused, as appears at the foot thereof, on the 9th day of March 1895, by Juan Conde, Registrar of Property of the Province of Isabela de Luzon for the reason that the document presented for the inscription contained a defect which could not be corrected and which consisted in the lack of the personality of the plaintiff company as a corporation. Not even a preventative annotation could be made of such a case (Mortgage Law Art. 65) Against the suspension or refusal of an inscription or preventative annotation, no appeal can be taken other than that prescribed by this law, (Mortgage Law, Art. 18) and thus recourse consists in a claim made to the Administrative authorities against the registration held as to the title. (Mortgage Law Art. 66) The gubernative recourse will lie in all cases in which the Registrar suspends or refuses the inscription or annotation, whatever may be its cause. (Art. 112 of the Mortgage Law Regulations.)

The plaintiff company has not complied with this law and it appears from the books of the Registrar and from the note of a subsequent Registrar, placed at the foot of the said exhibit No. 8, that the said Compania General de Tabacos de Filipinas again presented its title for record in the Property Registry, 3½ years later, when Juan G. Rodrigo was Registrar of Property, on the 16th day of September 1898, one day after the insurrectos had taken the town of Ilagan where the office of the Registry was situated and that the said title was recorded on the following day, September 17, 1898
218 The invalidity of the inscription made in this circumstance is self-evident and looks, furthermore, like a deliberate fraud.

2. The inscription in the registry of property says that the boundaries of the hacienda de "San Luis y la Concepcion" on the north and north-east, are as follows: bounded on the north by the arable lands of Joaquin de Guzman, on the north-east by public lands and the ranchos of Mabantad, Carabatan and Andarayan. Now if the plaintiff Company claims to be the owner with a just title of more land than that comprised within the recorded boundaries, the inscription is void because the inscriptions of deeds by which the ownership of real property is conveyed or declared, are void, not only when no mention is made therein of the boundaries, but also when they are described with such inexactness that a third person

may fall into error concerning the object of the circumstance itself and be prejudiced in consequence thereof. Mortgage Law 30 and 32.

Furthermore, the inscription shows the following irregularities, which tend to show that it is worthless:

A. The signature of the registrar Juan G. Rodrigo, which appears at the foot of the inscription of this title, is very different from the signature which appears at the foot of the inscription in the registry. The difference is very apparent, as is also the effort to imitate the signature at the foot of former inscriptions in the same registry book.

B. The fee for the inscription of titles appears in the registry book as 25 pesos, while the amount expressed at the foot of the documents themselves is $65.92.

C. The regulations say that if the inscription or annotation of various titles or rights included in one single title has been made, the note to be placed at the foot of the latter shall express precisely and succin-tly the operations effected, and furthermore, indi-
219 cate on the margin of the description in the title of each estate or right, its number, folio, book and number of the inscription or letter of the annotation which may have been made with respect thereto. (Regulation of Mortgage Law, article 273, and Mortgage Law, Article 244.) This was not done, but on the contrary, the original titles have no note, either at the foot or at the margin of the inscription of the estate; and the documents of conveyance from the alleged original owners to Antonio Pascual Casal and his executor, have at the foot thereof a note which is precisely the same as the note which appears on the recorded document, exhibit No. 8, instead of containing a marginal note as required by the regulations.

(5.)

A title is valid or void according to its inscription in the registry. When an original inscription or a copy of it is offered as evidence and it appears clearly from either of them that the proceeding has been irregular in any respect, no oral testimony is admissible for the purpose of correcting the defect, nor is it possible to remedy it by any explanation whatsoever.

And when the law requires a record, the title of a purchaser is valid according to the record itself in the Registry. No oral testimony will be admitted when the registrar has failed to record the originals or has recorded them defectively. (Newell on Ejectments, section 75, p. 330.)

The plaintiff Company plead a duly recorded title but had no interest in presenting its proof, the oirginal inscription in the Registry, or a copy thereof. Nevertheless, the defendants, for the purpose of supporting all their specific denials of the complaint of the plaintiff Company, present as evidence, certified copies of the original
220 inscription in the registry which were admitted and marked as exhibits B and C.

(6.)

A person when in possession is to be regarded as the owner of the thing possessed, until the contrary is established by competent evidence.

This is a fundamental principle of the law, that a person when in possession of a thing is presumed to be the owner until the contrary is proven. Therefore it is necessary that the plaintiff, in an action of ejectment, prove a good and valid title in himself, of the land in question. He can not avail himself of the weakness of the rights of the defendants, as the possession of the latter gives him a right against any other person unable to prove a title. (Newell on Ejectments, section 1, folio 354 and notes.)

(7.)

The defendant can rely on his possession.

In an action of ejectment, the plaintiff must rely upon the validity of his own title; a defendant can rest upon his possession and cannot be disturbed therein unless the plaintiff proves a valid title, even if the defendant be a mere trespasser. (Newell on Ejectments, section 2, folio 644 and following.)

Respectfully submitted,

R. S. MACDOUGALL,
Attorney for the Defendant.

By reason of the very limited time granted by the Court for the presentation of the brief in this case, the attorney has been obliged to leave out part of his argument upon the points, and by reason of the hasty manner in which the case was tried, the attorney was also compelled to waive oral arguments before presenting brief.

221 Title and Caption.

Decision.

The Compañia General de Tabacos de Filipinas, a mercantile corporation (sociedad anonima) domiciled in Barcelona, Spain, with a branch office in these Islands, and represented in the province of Isabela by Don Miguel Macias y Toro, who brought civil action against Don Miguel Tupiño and eighty-three co-defendants, for the purpose, among other things, of recovering the possession of several parcels of land, all situated within the hacienda known as "San Luis y la Concepcion" and lying at the northern part thereof, which parcels, of varying size, each and every one of the defendants illegally detained and have detained for a period of time not exceeding six years or less than one year, each one of them having built on the said parcels his house and warehouse or only his house.

The said hacienda which has been in existence since the year 1883, situated between the towns of Cauayan and Angadanan, in the province of Isabela, is of the exclusive ownership of the Compañia General, it having purchased it for the sum of 80,000 pesos from his

Excellency, Sr. D. Antonio Pascual Casal, who in turn acquired it by similar title from its original owners and settlers who had solicited and obtained a title to it from the State. It is composed of sixty parcels, separately belonging to various individuals, but which subsequently became the property of one person, that is, of the said Sr. Casal, who conveyed the lands to the Compañia General. And these parcels at the present time, all together, form the hacienda mentioned, which is a continuous extension of lands, whose superficial area is 3956 hectares, 25 ares and 28 centiares and whose limits are: On the north, the Rio Grande de Cagayan and
222 lands belonging to Victor Guzman; on the East Conayan estero and government lands; on the south, public lands and the rio grande de Cagayan; on the west, to its whole extent, by the same Rio Grande and on the north-west, public lands and part of the ranchos of Mabantad, Carabatan and Andarayan.

The said D. Miguel Macias proved his representative capacity to the corporate existence of the Company he represents, by a power of attorney and a certified copy of the pertinent part of the deed of incorporation of the plaintiff. The ownership by the latter of the hacienda in question and its extent and boundary lines have been proven by documents numbered 1 to 9 inclusive, all recorded in the registry of property of this province, on the 17th of September, 1898, and by a plan of the land marked "Exhibit No. 10" which is an integral part of the instrument or document "Exhibit No. 8." They presented also documents Nos. 11 and 12 for the purpose of proving with the former that the Compañia General paid the provincial Treasurer the land tax on the hacienda, and, with the latter, the inscription of this hacienda on the Forestry Department of Manila, in compliance with General Order No. 92, series of 1900. Finally they presented two documents, Nos. 13 and 14, for the purpose of showing some of the defendants had made a contract of acknowledgement with the plaintiff Company concerning its ownership of the property in question, and that some of the principal witnesses of the defendant had a feeling of resentment against the Company, because they recently lost a suit which they brought against it.

Upon these facts, established by the documents described, the plaintiff further alleging that because of the illegal possession complained of, it has suffered damages in the sum of 9,000 Mex-
223 ican pesos, it prays that it be restored in the possession of the lands so illegally held, that the trespassers be ejected therefrom with their houses and warehouses and that they pay the plaintiff Company the said sum of 9,000 Mexican pesos and that the judgment be against them for the costs.

It is to be observed that in the course of the trial and after the necessary legal formalities, the plaintiff Company obtained a preliminary injunction against the defendants, prohibiting them from cutting the fences or trees on the hacienda or to plant thereon maize or tobacco; and also obtained an order appointing a receiver, by virtue of which all the crop of tobacco collected on the land in question was put in the hands of a receiver, under proper security, until the final decision of this case. It is also to be observed that the plaintiff is

asking that a day be set for the trial of the case, moved for a judgment by default against the defendants Esteban Marcos, Ubaldo Batara and Lazaro Almazan.

The defendants, recognizing the personality both of the plaintiff Company and that of its representative, Sr. Macias, nevertheless specifically denied the principal allegations of the complaint and in the evidence introduced at the trial. as well as in their written brief filed afterwards, it clearly appears that their defence or exceptions consists in the following matters:

1. That the parcels possessed by each and every one of them are not situated within the perimeter of the hacienda of San Luis y la Concepcion and that some of them are on the lands said to belong to one Captain Manuel Dalauidao and others on lands belonging to D. Joaquin Guzman, now deceased. 2. That each and every
224 one of them is the owner of the parcel of land occupied by him, because it has been cultivated and possessed by some of them for more than ten years and by all of them for more than one year, without opposition on the part of any one *one,* without their having been disturbed in their peaceable possession, except in the month of August of this year, when the Compañia General ordered that a wire fence be put around its hacienda, including within it the lands occupied by the defendants. 3. And finally that the titles and documents of ownership of the plaintiff Company are invalid and that the inscription of the same in the registry of property is invalid. For the purpose of proving their allegations, the defendants presented under letter A a possessory title in favor of Victor Guzman and under letters B and C exhibited two transcripts of the entries of inscription of the hacienda in question in the registry of property. Finally they called a considerable number of witnesses, many of whom were defendants themselves, and finally an ocular inspection was made, at their instance, of the books of the Registry, for the purpose of calling the attention of the Court to a supposed confusion of boundaries, the difference of the signature of the registrar and the lack of conformity between the fees of the latter at the foot of the inscriptions in the books and those marked at the foot of the original titles.

Such are briefly the principal points debated in this litigation and such is the evidence adduced by the parties.

For the purpose of deciding these questions, it is therefore necessary to examine and pass upon the following questions:

First. Is the Compañia General de Tabacos de Filipinas really the owner and possessor of the Hacienda de San Luis and La Con-
225 cepcion, with the situation, superficial area and boundaries described in the complaint? Unquestionably, and this appears in the first place by documents Nos. 1 to 9 inclusive, all recorded in the registry and from the plan or document marked No. 10 as an integral part of document No. 8; in the second place from document No. 11, which shows the inscription of the hacienda in question in the Forestry Department of Manila, on April 19, 1901, by the Compañia General, in compliance with General Order No. 27,

issued by the United States Military Government of the Philippines as the necessary requisite under which the owners of timber lands may cut timber or other products without paying a license, and also from document No. 12, which shows that the Compañia as owner of the hacienda paid the corresponding land tax to the Treasurer of this province; in the third place from the document No. 13, a private contract to be identified, which contained an explicit acknowledgment of the ownership in question made by some of these defendants, and finally from the repeated acts of the Company, performed under its perfect right of ownership, consisting in various surveys, measurements, and verifications of boundaries—all done with the knowledge and passive assent of the defendants.

Against this array of evidence of ownership and possession, no other evidence of similar weight and importance has been opposed by the defendants. The documents marked Exhibits Nos. 1 to 7 are authentic, lawful and perfectly valid instruments; they are the documents executed by the State in selling various parcels therein described to the original settlers; that the validity of these documents was conditional, subject to their presentation before the Political-Military Governor of Isabela, and that this requisite has ap-
226 parently not been complied with is a question which should be determined between the State as vendor and the settlers above-mentioned as buyers; but when the registrar, who is an officer of the Government, recorded them in the registry, it is to be presumed that the condition was performed, and if not, the fault lies at the door of the Government which allowed its action for annulment to lapse by limitation. Those sales are at the present time as valid as though they had been made unconditional.

The documents marked Nos. 8 and 9 are also valid, as well as a plan marked No. 10. Document No. 8 is a general instrument of conveyance of the sixty parcels composing the estate in question and No. 9 is another instrument of amplification of the preceeding one, which satisfactorily explains the apparent difference or variation of superficial area of the hacienda in over one thousand and fifty hectares, upon which so much stress has been laid by the defendants. Document No. 10 is a general plan of all the hacienda and as such includes its total area; it shows the sum total of the partial areas of the sixty parcels of which it is composed; consequently, this document No. 10 is also valid, as is the sum total in connection with those added together.

The inscription of documents Nos. 1 to 7 is valid from every point of view, as is also that of the instruments Nos. 8 and 9, notwithstanding the fact that in the entries of inscription of the same in the registry they omitted to state that one of the boundaries of the hacienda on its northern part is the Rio Grande de Cagayan, such an omission does not constitute an uncorrectable error, but merely a lack of exactness which is not of a substantial character and
227 has not resulted in leading the defendants into error or caused them any harm, because they had liberty to examine the partial title of each parcel and they would have seen that the title

or document No. 1, gives as a northern boundary, the Rio Grande de Cagayan. Such an omission therefore, or lack of exactness in the entries of the Registry with respect to the inscription of one of the northern boundaries of the hacienda in question, cannot be said to make the inscription null or void. The same thing may be said with respect to what the defendants called the difference between the signature of the Registrar Juan G. Rodrigo, and the difference between the fees which he noted at the foot of the instrument and those which appeared on documents Nos. 8 and 9. I have made an ocular inspection of those signatures, and although I must confess I have had no technical training as a hand-writing expert, I have had, nevertheless, sufficient practical experience to be able to determine *a priori* whether a signature has or has not been falsified, imitated or forged; this, apart from the fact that counsel for the defendants not having formally denied the authenticity of the signatures, nor having expressed and declared that they are falsified, must be held to have admitted their authenticity, inasmuch as on the other hand they are authorized by the official seal of the Registry. With respect to the difference of the fees referred to, I cannot see any sufficient reason to bring into doubt the validity of the inscriptions, because if the documents are examined and the articles of the tariff which the registrar cites in the notes, it is easy to see the reason for the difference between the fees above referred to. Furthermore, it is a matter which in no wise affects the validity of the inscription, and
228 at the utmost might result in some civil or criminal liability on the part of the registrar. And then if we were to suppose for a moment that the inscription in question is void, even then the Compañia General would be the owner and possessor of the hacienda de San Luis and La Concepcion with a better right and under more advantageous conditions than all the defendants together.

Second. Has the Compañia General de Tabacos at any time lost its ownership or possession of the hacienda in litigation? Never, Not only has it not lost its ownership of its possession but it has made all possible efforts to preserve both rights as shown by documents Nos. 11, 12 and 13, its repeated acts of verification and determination by fixing monuments of the boundaries of the property and the fact that it made two attempts to record its titles in the registry and that it brought this present action.

Third. Are the defendants wrongfully withholding possession of various parcels of the hacienda of San Luis y la Concepcion and, if so, are these parcels within or without the perimeter of the said hacienda? The answer to the first part of the question is necessarily affirmative. To wrongfully withhold possession of real property is to occupy it without right or sufficient title—to possess it without warrant of law. This being so, it necessarily follows that the defendants are trespassers upon the portions of land which they occupy, they having neither right nor title therefor, because they are possessing them without warrant of law, without the knowledge and against the will of the managers and employés of the Compañia
229 General, the exclusive owners of the said lands. Not only do they wrongfully withhold possession of them, but do so

illegally, because notwithstanding the advice given them several times by Mr. Macias and the attempts on his behalf of Ignacio Flores and Don Marcelino Gonzales to induce the defendants to acknowledge the ownership of the Compañia and to accept the conditions established by the Compañia concerning its hacienda, they continued to wrongfully withhold certain parts of the hacienda and to refuse up to the present time to acknowledge the rights of the proprietor. These portions or parcels are situated within the perimeter of the hacienda. This has been so stated by various witnesses, among them Señor Macias, Don Luis de La Vega and the said Ignacio Flores, and this fact has also been recognized by the defendants themselves when they testified that the Compañia General ordered a wire fence to be put around the hacienda, including within the said fence the parcels occupied by them.

In my opinion, the oral testimony of the defendants to the effect that the lands in question are within the lands of Joaquin or Victor Guzman or Manuel Dalauidao, is unworthy of credence. This evidence shows every indication of being artificial, improbable, unworthy of credence and inadmissible in point of law. The value of testimony does not necessarily depend upon the number of witnesses or the simple coincidence of their statements; it should be weighed for its exactness or probability and by the degree of veracity or impartiality and other conditions of the witnesses. These conditions are not found in the testimony of the defendants or that of the innumerable witnesses presented by them, for the examination of these witnesses has been purely and totally leading. Some of the witnesses are open enemies of the plaintiff; others are barely able to count years and are unable to give an exact idea of time and none of them were able to state the boundaries even of the imaginary land of Dalauidao or Joaquin Guzman, the superficial area of which they have grossly exaggerated. The documentary evidence is, to my mind, of an indestructible character and I can not conceive the possibility of its being overcome by the arc*h*ful contradiction of oral testimony of the kind which has been presented.

The lands then which the defendants possess and wrongfully withhold, are unquestionably within the perimeter of the hacienda in question.

Fourth. Has this wrongful withholding of possession caused damage to the plaintiff Company? Unquestionably. The damages consist in the fact that the defendants cut timber upon the hacienda for the purpose of constructing their houses and warehouses and in the disturbance which their presence necessarily involved by preventing the Company from putting other tenants on the land to operate the estate. The measure of these damages is the amount of the rents, products and profits received or which might have been received from the lands in question by the owner, up to this time; and, further, damage caused by the necessity of bringing this suit, which necessarily involves considerable loss, expense and trouble.

Fifth and last. Can the defendants rely upon the statute of limitations as a defense to the action brought by the plaintiff? By no means, as to any of them. The greater part of them have not been

in possession for ten years and those who claim that they have been in possession for more than ten years but for less than thirty years, even if this possession be true, have not been possessors in good faith,
or with a just title. Nor has the possession even been con-
231 tinuous. Furthermore, as no one of them has a written title,
it is evident that they can not set up the defense of limitation against an adverse party who has a recorded title, inasmuch as the Civil Code provides that the ownership of lands cannot be acquired by prescription against a recorded title to the prejudice of a third person, except by virtue of another title also recorded. With respect to the extraordinary prescription this cannot be available to the defendant Justo Allam, who is the only one who alleges possession for thirty years, but unsucessfully, because this extraordinary prescription cannot prevail, the possession not having been continuous, for it was interrupted, first by the sale of the lands in question by the State to the original settlers, in October 1882, as shown by exhibits Nos. 1 to 7, and second because the said Justo Allam entered into a contract of lease with the Compañia General, acknowledging its ownership. On the other hand, as appears conclusively from paragraph 2 of article 38 of the Code of Civil Procedure, all persons who have acquired a right of action by prescription, must vindicate this right by the commencement of an action or special proceeding for its enforcement, and as Justo Allam has not commenced such a special proceeding, it follows that he can not now avail himself of this defense against the plaintiff Company under claim of prescription.

To sum up then what has been stated, it appears that the Compañia General de Tabacos de Filipinas has been in possession of the hacienda of San Luis y la Concepcion, under claim of ownership, from 1884 to date, without interruption, and that some parts of the
said hacienda are illegally withheld by the defendants, none
232 of whom is entitled to avail himself of the defense of the
ordinary or extraordinary prescription; and that by reason of such illegal withholding of possession, the plaintiff Company has suffered damages, which are calculated as amounting to nine thousand Mexican pesos.

The owner of real property becomes the owner of all the rents, issues and profits thereof, or those which might have been obtained therefrom. Possessors of such real property in bad faith are responsible for these rents, issues and profits, even if they have never received them and are required to indemnify the owner by paying the value of such rents, issues and profits if they have been already received and consumed, being also under obligation to pay the value of such fruits as might have been received and the costs of the action.

The right of the plaintiff Company having been proved it follows that their right to the preliminary injunction granted has also been proved and that they are entitled to have this preliminary injunction made perpetual and that the bond given by them for the purpose of obtaining the said preliminary injunction should be canceled.

Finally, by reason of the fact that the defendants, Estevan Mar-

cos, Ubaldo Batara and Lazaro Almazan have not as yet entered an appearance notwithstanding the service of process upon them in due form, and the expiration of the regular terms, judgment must be entered against them by default.

Consequently, for the reasons stated, I decide: First, that the Compañia General de Tabacos de Filipinas shall be restored by the sheriff or by any of his deputies, to the possession of the hacienda San Luis y la Concepcion by giving possession thereof to D. Miguel Macias y Toro or any other person lawfully representing the said Com-
233 pany. Second, that judgment go against the defendants Esteban Marcos, Ubaldo Batara and Lazaro Almazan by default. Third, that both the present defendants as well as those declared in default, be required to immediately vacate the said hacienda or be evicted therefrom, together with their houses and warehouses. Fourth, that the preliminary injunction issued on the 15th of November last and modified on the third inst. be regarded as perpetual from this date and the injunction bond of $10,000 given is to be cancelled after the proper legal formalities. The tobacco in the hands of the receiver will be delivered to the Compañia General and the bond given by the receiver, cancelled, after rendition by him of the accounts of his receivership. Fifth and last, that the defendants present and those in default pay the costs and damages in the sum of nine thousand Mexican pesos, and finally, that the said defendants are enjoined absolutely from performing any act hereafter tending in the slightest degree to disturb the possession by the Compañia General of the lands comprised within the hacienda of San Luis y la Concepcion. So ordered.

ISIDRO PAREDES,
Judge of First Instance.

Ilagan, December 24, 1902.

UNITED STATES OF AMERICA, *Philippine Islands:*

Court of First Instance of Isabela.

THE COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Corporation, Plaintiff,
vs.
MIGUEL TUPIÑO ET AL., Defendants.

The plaintiff having heard the judgment and having heard
234 the attorney for the defendants, states that he will present a bill of exceptions, asking the Court to authorize the Clerk to issue a writ of execution on the judgment ten days after its publication, and in case the defendants ask for a supersedeas, that the Court demand as a condition therefor a good and sufficient bond for not less than 40,000 Mexican pesos as security for the damages which will unquestionably be suffered by the Compañia Tabacalera by the delay in the restoration of the said Company to the possession of the

land in litigation. The defendants are invited to appear before the Court on the 29th inst. at 9 a. m. to hear the motion in the Court of First Instance.

VICENTE NEPOMUCENO,
Attorney for the Plaintiff.

Ilagan, December 24, 1902.

UNITED STATES OF AMERICA, *Philippine Islands:*

Court of the Justice of the Peace of Ilagan.

I, Don Miguel Macias y Toro, Spaniard, inhabitant of Ilagan, of the province of Isabela, swear that I know positively that the hacienda of "San Antonio" and "Santa Isabel," both the property of the Compañia General de Tabacos de Filipinas, and the only place which the Compañia has in the province of Isabela to temporarily place the cattle which they have recently bought, is infected by the epidemic known as "epizotia" and that it — very dangerous therefore to put the said cattle on the said haciendas, which cattle moreover are intended for use on the hacienda "San Luis."

And that owing to the disturbance caused on the latter hacienda and the state of mind of the persons who have been cited by
235 the Compañia, it is equally perilous for the interests of the Compañia to put the cattle there, as they would be exposed to any outrage.

That this condition of affairs is causing the said Compañia irreparable damage, which can only cease by the immediate execution of the judgment rendered.

That until the defendants are evicted, it will be impossible to take to the said hacienda de San Luis a number of families with whom contracts have already been made, because a conflict with fatal consequences would unquestionably result, and this fear is reasonably founded in the criminal acts which have been recently committed on the said hacienda.

Ilagan, December 29, 1902.

M. MACIAS.

Signed and sworn to before me, in Ilagan, December 29, 1902.
MARIANO CLARAVALL,
Justice of the Peace.

UNITED STATES OF AMERICA, *Philippine Islands:*

Court of the Justice of the Peace of Ilagan.

We, Don Luis de la Vega Inclan and Joaquin Sanchez Mena, Spaniards and residents of the hacienda San Luis y La Concepcion, of the town of Cauayan, of this province, swear that we saw a flag in the middle of the Cagayan river, in front of the house which the Tabacalera Compania has on the hacienda, which flag, as stated by

the inhabitants of Minanga and Mabantad, indicates that Miguel Tupiño and the other 83 persons cited by the said Compañia, had won the suit; that according to their statement they had another flag in one of the houses on the land of Lacaste's wife, which flag is to be carried in a procession as a sign of victory and they have purchased several candles to be carried in said procession.

236 We also swear that we saw the fence of the hacienda cut, this fact having coincided with the arrival in Ilagan of an emissary, who came there for the purpose of taking contributions for the expense of a suit, and hence we infer from these facts, of which we have been informed by hearsay with exception of what has been said as to the fence, which we, ourselves saw cut, that this is due to instructions which may have been given in Ilagan.

Ilagan, December 29, 1902.

LUIS DE LA VEGA.
JOAQUIN SANCHEZ.

Subscribed and sworn to before me in Ilagan, December 29, 1902.

MARIANO CLARAVALL,
Justice of the Peace.

Hearing on the Motion.

In Ilagan, in the Court of First Instance of Isabela de Luzon, December 31, 1902.

Before the honorable Judge, assisted by me, the Clerk, the parties to the suit being present, the plaintiff Company by its attorney, Don Vicente Nepomuceno, and thirteen of the defendants who appear on their own behalf and on behalf of their co-defendants and the motion having come up for hearing, the moving party stated that he referred to his petition of the 24th inst., and presents two affidavits to demonstrate the urgent necessity of the issue of the writ of execution requested. Upon hearing the defendants, they stated that they opposed the motion, as in the act of publication of the judgment they announced their intention to take an exception thereto, and asked the Court to deny the motion, or that they be given a reasonable time within which to look for a lawyer to defend them in place of Mr. MacDougall.

The attorney for the plaintiff in reply stated that he insisted upon asking that the judgment be executed within the term of ten days from the following the publication of the decision and also

237 states that he does not consent to the time asked for, but that this is subject of course to the discretional power of the Court.

The Judge thereupon rendered the following:

Decision.

The Compañia General de Tabacos de Filipinas, plaintiff and prevailing party in this suit, asked the Court to make an order authorizing the Clerk to issue an execution on the judgment, if, upon the

expiration of the legal period for the presentation of a bill of exceptions the defendants do not present it, or, if they do present such bill of exceptions, in case they fail to give a bond in the sum of 40,000 Mexican pesos as security for the performance of the said judgment. The motion is based on several affidavits, which lead to the conclusion that the prevailing party would suffer grave and irreparable damage if the execution of the judgment be delayed. The plaintiff Company has a large number of cattle, which it can not put on the hacienda in question, until the defendants are evicted, and these cattle are in imminent peril of being lost by the epizotia which prevails in the place where they are now provisionally located. The plaintiff has also made contracts with a number of people brought from distant provinces to work as tenants on the hacienda in question. Finally, it is feared that grave damages may be suffered by the said hacienda and that the peace may be disturbed if the defendants remain there and that the lands wrongfully withheld can not be planted until the defendants are expelled therefrom.

The defendants, to wit, the losing party, on the very day of the publication of the judgment, were so unfortunate as to lose the services and advise of their attorney, he having been suspended from the practice of his profession, oppose the motion of the adverse party,
238 alleging that as the judgment has been excepted to, it can not be executed, and ask that the motion be denied or that they at least be given time to get another attorney.

This question is controlled by article 144 of the Code of civil procedure. Although the general rule is that no execution shall issue upon a final judgment, pending an appeal, nevertheless, this article contains an exception, which authorizes the Court in its discretion, when special reasons exist, to authorize the execution of the judgment. Such reasons are found, in the statements made by the prevailing party in support of his motion. The question of law and of strict justice appears to be thus determined, but the question of equity and the use of the discretionary power of the Court remains to be demonstrated.

I am of the opinion that in protecting the rights of the prevailing party by making use in its favor of the powers conferred upon me by law, I might, at the same time, so exercise that power as not to prejudice the losing party as to their right to appeal and that they should not be deprived of the opportunity of obtaining the services of an attorney. This is the request which the defendants make of me and such action is required by the principles of equity.

The underlying theory of the present procedure of law is a wide discretion in the construction of pleadings, a liberal interpretation of the principles of law for the purpose of assisting parties in obtaining speedy justice, a proper discretion and a prudent exercise thereof on the part of the courts in special and extraordinary cases.

Thus conciliating within these principles the opposing demands of
239 both parties, I decree: 1. That a writ of execution on the judgment rendered in this action on the 24th instant be issued by the clerk of the court and executed by the sheriff thereof

if the defendants do not present their bill of exceptions within the period of thirty days from this date, this extraordinary period being allowed them so that they may look for an attorney to represent and defend them. 2. I also order that the said writ shall be executed notwithstanding the bill of exceptions, if, within the said period of thirty days from this date the defendants do not present a bond in the sum of $30,000 Mexican pesos, in favor of the adverse party and conditioned for the performance of the judgment should it be confirmed in whole or in part. It is so ordered.

This decree having been published immediately upon the hearing of the motion, the parties were informed thereof, the court adjourned and the present minutes of the proceedings were drawn up, which were signed by those who were able to do so, and to which I certify.

ISIDRO PAREDES,
VICENTE NEPOMUCENO.
BARTOLOME GUITAN.
DIONISIO RESPICIO.
BASILIO GASPAR.
MARCELO CRISTOBAL.
FRANCISCO TACCAD, *Clerk.*

UNITED STATES OF AMERICA, *Philippine Islands:*

Court of the Justice of the Peace of Ilagan.

I, Francisco Balbas y Alvarez, Spaniard, resident of Ilagan, swear that the lands belonging to the hacienda of San Luis y la Concepcion, held by trespassers, are more than four hundred hectares in extent; that several agents have been sent to Ilocos Norte for the purpose of bringing some two hundred or two hundred and fifty tenants upon the said hacienda; that contracts have been made with several families living in Cagayan to go upon the said
240 hacienda; that one hundred and seventy head of cattle have been received and that some three hundred head more are about to be received, and that in addition a large number of cattle have been contracted for for the purpose of establishing a stock farm on the said hacienda; and that if the lands in litigation are not immediately restored to the Compañia, that considerable damage will be suffered, which is estimated as approximating $45,000 Mexican pesos; that the said cattle cannot be placed on the said estate on account of the occupation of the lands and the lack of security resulting from the excited condition of the persons who have been sued by the Company.

Ilagan, December 24, 1902.

F. BALBAS.

Signed and sworn to before me in Ilagan December 24, 1902.

MARIANO CLARAVALL,
Justice of the Peace.

UNITED STATES OF AMERICA, *Philippine Islands:*

Court of the Justice of the Peace of Ilagan.

I, Don Miguel Macias y Toro, Spaniard and inhabitant of Ilagan, swear that it is true that more than four hundred hectares of land belonging to the hacienda of San Luis y la Concepcion, is in the occupation of trespassers; that several persons have been sent to Ilocos Norte for the purpose of getting tenants, who will not be less than two hundred in number; and that contracts have been made in Cagayan with a number of persons to go upon the said estate as tenants of the Compañia General de Tabacos de Filipinas; that one hundred and seventy head of cattle have been received; that three hundred head or more are en route; and that a still further important shipment has been contracted for with a view to establishing a stock farm on the said hacienda; that if the lands in litigation are not immediately restored to the Compañia, it will suffer con-
241 siderable damages, not less than forty thousand Mexican pesos; that the said cattle can not be put on the hacienda, both on account of the occupation of the lands and on account of the insecurity resulting from the disturbance and by the condition of mind of the persons who have been sued by the Compañia.

Ilagan, December 24, 1902.

M. MACIAS.

Subscribed and sworn to before me in Ilagan, December 24, 1902.

MARIANO CLARAVALL,
Justice of the Peace.

242 (Heading and Caption.)

Now come the defendants, within ten days from judgment, and move the Court for a new trial, upon the following grounds:

I. Because the judgment is contrary to the Law.

II. Because the judgment is contrary to the evidence and to the principles of justice and equity.

III. Because the following material proofs were illegally admitted over the objection of the applicants, to-wit:

The documents marked exhibits 1 to 12 inclusive.

The petitioners, by their attorney, R. S. MacDougall, objected to the admission of said evidence when offered, and then and there offered the following reasons in support of the said objections:

That the documents marked exhibits 1 to 7, inclusive, are void, because it appears therefrom that they were not presented to the Political-Military Governor of the province of Isabela, Luzon: Because they were not recorded in the said province by the original owners; because the persons whose names appear therein as owners were not put in possession of the lands described in said documents in the legal ordinary form, as required by one of the clauses thereof, which especially directs the performance of these requisites as con-

ditions precedent to the efficacy of the deeds, stating that a failure to perform such condition would operate to annul the documents.

That the documents marked exhibits 8 to 9 are void and inadmissible as evidence because they were recorded on the 17th of September, 1898, two days after the Insurgents took the town of Ilagan from the Spaniards; that the signatures of the Registrar Juan G. Rodrigo,
243 which appear in the documents, and those which appear in register, are not the same; that the boundaries described in the said documents are not the same as those which appear and were pleaded in the complaint of the plaintiff Company, in which it is alleged that the boundaries of the estate claimed by the Company are the lands occupied by and in possession of the defendants; because the said documents were refused registration by the Spanish Registrar Juan Conde on the 9th day of March 1895, who wrote his reasons at the foot of said documents, stating that he could not record them because the plaintiff Company had no legal personality as a corporation, which defect appeared to be irreparable, and that the plaintiff Company has taken no steps to correct the defects in the manner prescribed by law for such cases; which said objections the Court overruled.

In connection with this the Court decided, and so notified the petitioners, that all the documents presented as evidence by the plaintiff Company at the time, as also all those which might subsequently be brought, would be admitted in evidence.

To which said ruling plaintiff excepted.

The petitioners objected to the admission in evidence of document marked exhibit No. 13 at the time it was offered, and then and there gave the following reasons in support of their objection:

That the document is a contract and has not been plead or mentioned in the plaintiff's complaint; wherefore it should not be admitted and used to prove a breach of contract in this action; which said objection the court overruled.

IV. Because during the trial, when the attorney for the de-
244 fendants was cross-questioning the witness Manuel Nieto y Noriega, Head manager of the Compañia General de Tabacos de Filipinas, in the Cagayan and Isabela Valley, and the witnesses Ignacio Flores, the attorney for the plaintiff Company arose from his seat and going over to where the witnesses were sitting whispered to them before they had replied to the cross-question propounded by the attorney for the defendants, without the court preventing this, notwithstanding the objections and protests of the attorney for the defendants.

Because the court prohibited the attorney for the defendants from continuing to present certain cross-questions, stating that such cross-questions were sufficient to disturb the equanimity of the most self possessed man.

Because when the witness Gregorio Soriano was cross-questioned by the attorney for the defendants, and when he had admitted that he had changed the boundaries of the hacienda "San Luis and La Concepcion" on the map, presented as evidence and admitted as such, marked exhibit 10, the attorney for the plaintiff stated to the wit-

ness: "Don't say too much, and if you don't remember well say that you don't know."

V. Because in the progress of the trial the presiding judge erred, by giving his opinion as to what had been proven as follows:

During the trial the Judge said to the witness Justo Allam during his examination: "Is it not true that you have a book with the Company? Would you be capable of denying your signature? Don't you think that the Company has a book concerning you which gives all the data?"

Wherefore the defendants pray the Court, for the reasons
245 stated, to grant a new trial.

Ilagan, Dec. 29, 1902.

DIONICIO RESPICIO,
BARTOLOME GUITANG,
CARLOS CALIMAG,
EDUARDO DOMINGO,
MAXIMO GALABAY,
LEON GALABAY,
TEOFILO ALERIANO,
For Themselves and in the Name and on Behalf of the Other Defendants.

Service acknowledged.

VICENTE NEPOMUCENO,
Abogado of the Plaintiff.

Decision.

Article 145 of the code of civil procedure gives the following reasons as grounds authorizing a new trial: Accident or surprise, newly discovered evidence, or the belief on the part of the Judge that his decision was contrary to the law or not supported by the evidence.

The motion is not founded upon either of the two first grounds indicated, but only on the latter, and that without sufficient reason. This motion contains nothing but mis-statements and offensive and insulting falsehoods concerning the Court and, on the other hand, repetitions of arguments which have been already passed upon by the rulings during the trial or by the decision.

The reasons given under No. 1 and 2 are false. The third ground and the arguments by which it has been sought to support it have already been decided as stated in the course of the trial, and also by the judgment, although in the judgment they were referred to in general terms, naturally. The fourth ground is not true and is highly insulting to the Court. The words addressed by the attorney for the plaintiff to the witness M. Nieto were for the purpose
246 of calling his attention to Exhibit No. 13, and the attorney arose from his seat for the purpose of showing this document to the witness, who was, owing to his defective sight, unable to see or read it. It is false that the attorney for the defence made any objection, as it is also false and insulting to say that the Court did not prevent this notwithstanding the supposed objections. No one has been prohibited from questioning or cross-questioning any witness. All the rulings during the trial, whether favorable or unfavorable to

either of the parties, have been duly entered in the record. The words addressed by the attorney for the plaintiff to the witness Soriano were for the purpose of calling his attention, so that he might testify calmly and with a full knowledge of the facts.

The fifth ground is also false and insulting. All the questions which the court addressed to Justo Allam were for the purpose of assuring himself as to the veracity of the witness, who testified in such a vacillating way, hesitated and changed color. In all the courts of the world Judges are at liberty to examine and question witnesses for the purpose of convincing themselves as to whether or not they speak the truth.

The motion for a new trial is denied, and in accordance with the provisions of section No. 107 of the code of civil procedure the false allegations are stricken out, upon the ground that they are inapplicable, irrelevant, redundant and insulting, as they appear in the motion papers under the numbers above mentioned, with the express condition that if the defendants again make such statement they will be prosecuted under the law and be punished according to their merits, or else this will be done with respect to those who
247 drew the motion papers, of the contents of which the defendants were doubtless in ignorance. So ordered.

This decision having been published immediately, the parties were informed thereof and the Court adjourned and thereupon these minutes were prepared and signed by those who knew how to write, together with the Judge, to which I certify.

Signatures. ——— ———.
——— ———.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance of the Province of Isabela.

THE COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, a Corporation Represented by Don Miguel Macias y Toro, Plaintiff,

vs.

MIGUEL TUPIÑO, EULALIO EUGENIO, JUSTO EUGENIO, AGUSTIN LA FUENTE and Others, Defendants.

The defendants in the above entitled action hereby except to the order of the Court denying motion for a new trial.

Ilagan, December 31, 1902.

DIONICIO RESPICIO,
BARTOLOME GUITANG,
MARCELO CRISTOBAL,
NICOLAS LUCAS,
FELIX ASIO,
BASILIO GASPER,

For Themselves and All the Other Defendants, to the Number of Seventy-five, in Whose Names and in Whose Behalf They Sign.

Service acknowledged.

V. NEPOMUCENO,
Attorney for Complainant.

248 Office of the Clerk of the Court of First Instance of Isabela De Luzon of the First Judicial District of the Philippine Islands.

No. 16.

ILAGAN, 17 *de Febrero*, 1903.

Clerk of the Supreme Court of the Philippine Islands, Manila.

SIR: In accordance with the provisions of Article 143 of the code of civil procedure, I have the honor to send you herewith for the corresponding facts the enclosed bill of exceptions, presented against a judgment rendered in a civil action brought by the Compañia General de Tabacos, for the unlawful detainer of certain lands included in the hacienda of San Luis y la Concepcion, together with the transcripts of all proceedings at the said trial, cited in the bill in question, including those added by the plaintiff and the plan marked exhibit 10, which has been taken from the record, there being no other, and for which reason I earnestly request you to return the said documents.

I also transmit to the Supreme Court the bill of exceptions presented against the rulings of the Court in connection with the injunction issued in the above entitled action, together with the documents therein cited and other matters added by the plaintiff.

Very respectfully,

(S'g'd) FRANCISCO TACCAD, *Clerk.*

Filed in the Clerk's office of the Supreme Court this 7th day of March, 1903, with the accompanying documents.

249 I certify.

(S'g'd) F. C. FISHER,
Clerk of the Supreme Court,
By E. H. COLE, *Deputy.*

Francisco Taccad, Clerk of the Court of First Instance, Province of Isabela de Luzon, of the First Judicial District of the Philippine Islands.

I certify: That in the civil action for the unlawful detainer of lands in the hacienda of San Luis y la Concepcion, brought by the Compañia General de Tabacos de Filipinas, plaintiff, against Miguel Tupiño and others, as defendants, a motion was presented by the plaintiff company, which was decided by the honorable Judge Señor Paredes, by order dated the 31st of December last, fixing in the amount of thirty thousand Mexican pesos the bond to be given by the defendants for the suspension of the execution of the judgment, against which order the defendants did not except in due time.

In witness whereof and at the request of Don Miguel Macias I issue this certificate in Ilagan, the 22nd of January 1903.

(S'g'd) FRANCISCO TACCAD, *Clerk.*

(Heading and Caption.)

Don Miguel Macias y Toro, representative of the Compañia General de Tabacos de Filipinas, in this province, having been
250 served with a copy of the bill of exceptions presented by Miguel Tupiño and others against the judgment entered and published on the 24th of last month, appears before this Court and states:

(First.) That in case the bill of exceptions be examined by the honorable Judge of First Instance of the District before the Clerk issues a writ of exception of the judgment in question, the moving party insists upon praying the honorable Judge to direct that the said judgment be immediately executed, because the property of the sureties Nicolas Lacaste, Engracia Maraggun, Fernanda Corciano, Manuel Dalauidao, Bruno Dalauidao, Lucas Mendoza and Manuel Galutan, only amount to the sum of $4,880.00 a sum vastly inferior to that of $30,000.00 fixed by the Court in its order of December 31st last. In support of this motion the following documents are presented:

(*a*) Certificates from the provincial treasurer as to the assessed property belonging to the said sureties.

(*b*) Affidavits of D. Andres Claraval, D. Pascual Dalupan, Don Romualdo Guzman and Don Severo Fermin.

(*c*) A certificate from the clerk of the Court that Nicolas Lacaste is at present a surety in the sum of $600.00 for the defendant Rufino Felipe.

(*d*) A certificate from the Clerk of the Court that against the order of December 31st last, fixing the bond at $30,000, the defendants have not excepted in due time.

It is also proper to call the attention of the Court to the fact that when the bond is personal it is customary that the number of sureties responding *in solidum* in the amount fixed should be sufficient to cover double the amount of the bond; that personal property
251 consisting of live stock offers but little security, by reason of the fact that it is subject to loss, on account of the epizotia which has been decimating, and still continues to decimate live stock.

The attention of the court is also called to the falsity of the affidavits of the said sureties, in order that the Court if he deems it proper to do so may refer the matter to the provincial fiscal, so that he may if he sees fit institute a prosecution for the crime of falsification.

Second. That upon the supposition that the judgment will be executed upon a writ to be issued by the clerk, or else by an order of the Court himself, it would be useless for the Court to certify and send to the Supreme Court a bill of exceptions.

Third. In case the security should be completed to the sum of $30,000, and the Court should certify the allowance of the bill of exceptions, I ask that transcript be issued of the following papers for the purpose of attaching the same to the said bill of exceptions.

(*e*) Copy of the various articles of the By Laws and Regulations

of the corporation styled "Compañia General de Tabacos de Filipinas."

(*f*) All the rulings of the Court on the various questions raised at the trial concerning the offer and admission of evidence and concerning the relevancy or irrelevancy of the questions direct and cross.

(*g*) The testimony, direct and cross, of Don Jose Vicente Póo, Don Manuel Rodriguez Tori, Don Baldomero Guillen, Don Enrique Tabiel de Andrade, Don Luis de la Vega and Don Mariano Claravall, witnesses for the plaintiff Company.

(*h*) All the original documents numbers 1, 2, 3, 4, 5, 6,
252 7, 8, 9, 10, 11, 12, 13 and 14, offered as evidence for the plaintiff, and also a transcript of this petition.

Fourth. The plaintiff insists that the special bill of exceptions concerning the injunction and the receivership be not sent to the Supreme Court separately, but that it be attached to this bill, because its purpose is subordinate to the judgment appealed, for the preliminary injunction has been converted into a perpetual injunction, and furthermore, because Article 143 of the code of civil procedure says: "Upon the rendition of a final judgment disposing of the action, either party shall have the right to present a bill of exceptions for a review by the Supreme Court of all the rulings, orders and judgments made in the action to which the party has duly excepted at the time of making such ruling, order or judgment."

Fifth. With respect to the motion for a new trial which was refused by the Court, the plaintiff asks that the following transcripts be issued, for transmittal with the bill of exceptions:

(*i*) The paper presented by the plaintiff company in opposition to the motion.

(*j*) The sworn testimony of Don Miguel Macias, Don Francisco Balbas, Don Gregorio Soriano, Don Manuel Nieto.

Sixth. Plaintiff asks that the various mis-statements be stricken out of the motion papers of the defendants, which mis-statements are as follows:

(*k*) Speaking of exhibit No. 8 the defendants, notwithstanding the fact that they had no evidence on the point used the words *"Not including the lands in suit,"* which are described in the said documents as forming the boundaries on the north and north-west of the hacienda of San Luis y La Concepcion.

253 (1) Speaking of exhibit 9 they say, among other mis-statements, that the signatures of the registrar, as they appear in the documents and on the books of register, are not the same; and that the registrar Conde, in refusing inscription *decided that the documents could not be recorded on account of the lack of personality of the plaintiff corporation, which defect did not appear to be reparable,* as though the Registrar were a Judge, competent to decide the question.

(11) That it is not true that Judge Paredes told the attorney R. S. MacDougall *to cease interrupting the witness with objections.*

(*m*) Neither is it true that the plaintiff company presented exhibit No. 13 to prove a breach of contract but to prove that the company had exercised acts of ownership on the hacienda of San Luis y

la Concepcion, and also to prove that the other defendants, whose names do not appear in the said document, were not at the date it was executed in occupation of the lands within the boundaries of the hacienda,—that is to say, that their trespass is of a recent date.

(*n*) That it is also false that the original title deeds from the Government, numbers 1 to 7, were not presented to the Political Military Governor or that they were not recorded in that Government, and that the persons whose names appear in the said titles were not put in possession of the lands therein described in the ordinary legal form; it is a rebuttable presumption that all these conditions have been performed for the purpose of perfecting justly acquired titles, which presumption has not been destroyed by
254 contrary evidence but, on the other hand, is supported by various facts, such as, for instance, the conveyance on two actions, and before officers of the Government, to-wit Notaries Public, of the said lands, the fact that they were recorded by the Registrar of Isabela, the Chief of the Forestry Bureau in the books of that office and the fact that the Provincial treasurer recorded all the lands in question as part of the hacienda of San Luis y la Concepcion in the book of appraised properties.

Ilagan, January 23, 1903.

M. MACIAS.

Office of the Provincial Treasurer.

ILAGAN, ISABELA, *January* 10, 1903.

I certify that in the registers of the land tax of this office appear the following properties registered in the name of Don Lucas Mendoza, the appraised value of which is as follows:

Name.	Municipality.	Barrio.	Description.	Value.
D. Lucas Mendoza ..	Cauayan.....	Dabburrab....	One piece of land.	$300.00
Total.....				$300.00

V. B. STEWART,
Treasurer, Province of Isabela.

Office of the Provincial Treasurer.

ILAGAN, ISABELA, *January* 10, 1903.

I certify that in the registers of the land tax of this office appear the following properties registered in the name of Don Manuel Dalauidao, the appraised value of which is as follows:

255 Name.	Municipality.	Barrio.	Description.	Value.
Don Manuel Dalauidao...	Cauayan.....	Kabantad.	Land.....	$320.00
" ...	"	"	"	210.00
" ...	"	"	"	100.00
" ...	"	"	"	210.00
" ...	"	"	A lot.....	600.00
Total.....				$1440.00

V. B. STEWART,
Treasurer, Province of Isabela.

Office of the Provincial Treasurer.

ILAGAN, ISABELA, *January* 10, 1903.

I certify that in the registers of the land tax of this Office appear the following properties registered in the name of Don Bruno Dalauidao, the appraised value of which is as follows:

Name.	Municipality.	Barrio.	Description.	Value.
Don Bruno Dalauidao....	Cauayan.....	Tagaran ..	A field.....	$250.00
"	"	" ..	"	300.00
"	"	" ..	"	300.00
"	"	" ..	"	200.00
"	"	" ..	"	100.00
"	"	" ..	A piece of land	40.00
Total.....				$1250.00

V. B. STEWART,
Treasurer, Province of Isabela.

Office of the Provincial Treasurer.

ILAGAN, ISABELA, *January* 10, 1903.

256 I certify that in the register of the land tax of this office appear the following properties registered in the name of Don Nicolas Lacaste, the appraised value of which is as follows:

Name.	Municipality.	Barrio.	Description.	Value.
D. Nicolas Lacaste....	Naguilian.....	Centro.....	A lot.....	$70.00
"	"	"	"	350.00
"	"	Minallo	A field.....	70.00
"	"	"	"	200.00
"	"	Tomines.....	"	100.00
"	"	"	"	150.00
"	"	Naccurutan..	"	150.00
"	"	" ..	"	100.00
"	"	Mansibang ..	"	150.00
Total.....				$1340.00

V. B. STEWART,
Treasurer, Province of Isabela.

Office of the Provincial Treasurer.

ILAGAN, ISABELA, *January* 10, 1903.

I certify that in the registers of the land tax of this office appear the following properties registered in the name of Don Manuel Galutan, the appraised value of which is as follows:

Name.	Municipality.	Barrio.	Description.	Value.
Don Manuel Galutan..	Naguilian.....	Mansibang ..	A lot.....	$350.00
" ..	"	Naccurutan..	A filed.....	200.00
Total.....				$550.00

V. B. STEWART,
Treasurer, Province of Isabela.

257 Office of the Provincial Treasurer.

ILAGAN, ISABELA, *January* 10, 1903.

I certify that no land in the municipalities of Naguilian and Cauayan appears on the land tax books of this office as registered in the name of Doña Engracia Maraggun and Doña Fernanda Corciano, widow of Guzman.

V. B. STEWART,
Treasurer, Province of Isabela.

Number Thirty-four.

Notarial Act. In Ilagan, capital of the province of Isabela de Luzon, November 29, 1902. Before me Don Francisco Taccad y Paguirigan, Clerk of the Court of First Instance of this province, citizen and resident of this town of Ilagan, personally appeared Don Miguel Macias y Toro, of age, married, head manager of the Compañia General de Tabacos de Filipinas, in Isabela de Luzon and a citizen of Ilagan appearing in the name and on behalf of the said company by virtue of the power conferred upon him by Don Jose Rosales y Bustillo, head manager of the said company in these Islands, by letters of attorney Number 369, executed in Manila, before Notary Public D. Enrique Barrera y Baldes, as appears from the first copy of the said letters of attorney which he exhibits, the same having been issued by the said notary and which was returned at once to Señor Macias, who at the same time states under oath that the said power of attorney has not been revoked.

And having, in my judgment, the necessary legal capacity for the purpose of asking that this notarial act be extended in the
258 capacity above stated, in which it appears, nothing to the contrary being known to me, he freely and spontaneously states that the exhibits and copy of the By-laws and Regulations of the Compañia General de Tabacos de Filipinas, swearing that the same are authentic and are the same under which the said *said* Company has been operating since its organization, and asked that a literal copy be made of Articles 1, 2, 3, 4, 20, 27, 30, 31, 32, and the additional article of the By-laws; and articles 43/44/45, 46 and 67 and the additional words of the end of article 67 of the Regulations. The following is a literal copy of the articles above indicated.

By-Laws of the Compañia General de Tabacos de Filipinas.

Article 1. The Spanish Colonial Bank of Barcelona; the Spanish General Credit Company of Madrid; the Bank of Paris and of the Low Countries, His Excellency Antonio Lopez y Lopez, create and establish a mercantile credit Company, styled the Compañia General de Tabacos de Filipinas. This company shall be governed by the provisions of the Code of Commerce, by the act of October 19, 1869, and by the other laws in force.

Article 2. The Company's domicile shall be located in Barcelona, with a committee in Madrid, another in Paris and a deputation in the

Philippine Islands. It may furthermore establish branches at the said places, or at any other place in the Spanish possessions or abroad as may be deemed convenient by the Council of Administration.

Article 3. The duration of the Company is fixed at ninety-nine years from the date of its organization.

259 Article 4. The Compañia General de Tabacos de Filipinas has for its purpose: 1st. The cultivation, purchase, manufacture, sale and exploitation in the Philippine Islands. 2nd. The purchase of lands, their operation and cultivation for the production of tobacco and other agricultural products of those Islands. 3rd. The establishment and operation of factories, workshops, and such industrial appliances as it may be deemed convenient to use in the service of the company. 4th. To conduct all kinds of banking, credit, commission and mercantile operations, without any limitation whatever; to engage, on its own account or for the account of third persons, in Spain, The colonies or abroad, in all kinds of financial, agricultural, industrial, commercial and real estate operations and to undertake the performance of public works. In this connection the company may negociate loans to the State, provinces, or municipalities, or may regulate and establish credit-companies, upon general or special security; to buy, sell, discount and exchange all kinds of stocks and bonds of ordinary or credit companies, and publish an industrial, negotiable paper; to lease, collect or administer all kinds of taxes, public services or the State, provincial or municipal revenues; to undertake the performance of public works; to assign or perform the contracts to this end entered into; to organize and operate railroads, canals, highways, factories, mines, dry-docks, public lighting systems, and all other agricultural, industrial and maritime enterprses, and others of public utility; to make payments, collections, or to accept deposits for the account of other companies or of private individuals; to issue stock, coupons, bonds and

260 any other documents of credit, for its own account or for the account of third persons, at a fixed or variable period, and in such a manner as may be deemed convenient, with or without special guarantees; to create, purchase or obtain an interest in credit companies, mercantile companies or any others, banks of issue or discount, and to effect a consolidation with the same; to buy, sell and discount drafts and promissory notes; to make loans, sell drafts and engage in the usual banking operations, with all other incident thereto; to buy precious metals; to open account current; to open and obtain credits and accounts current; to make collections; to receive deposits in cash, and to effect all such operations of this character as are permitted by law and which the council may resolve to undertake. The company may engage in any other lawful business of whatever character it may be, provided that the council shall resolve, believing it to be for the interest of the Company.

Article 20. The council may delegate to one or more of its members, to the Executive Commission, to Committees, Deputations, Directors, or Officers of the Company, and even to outsiders, all or part of its powers for any particular purpose.

Article 27. The management of the company shall be entrusted

to a Director, to be freely appointed by the Council. The director shall, under the authority of the council, have the management of the company, and shall represent it in all its official acts and use the firm's signature.

Article 30. The Director shall represent the Company in all
261 judicial proceedings, without necessity of a special power of attorney to that end.

Article 31. For the active management of all the interests of the Company in the Philippine Islands the council shall appoint a general manager, to be selected by it. The general manager shall be authorized to use the firm's signature and to represent it, as well as to deal directly with the Government authorities, associations and other officers in those Islands, whenever the Vice-President of the delegated Board does not deem it proper to do so personally.

Article 32. In case of the absence or illness of the Director the council will appoint one or more Vice-Directors and a Sub-General Manager, who will perform the same duties in the Philippine Islands with respect to the General Manager. The Sub-General Manager in the Philippine Islands shall be the head of the commercial department, which he will control; and for this purpose he will be authorized to use the firm's signature. The Vice-Director and the Sub-Manager will furthermore perform such duties as may be assigned to them by the council.

Additional Article. The Regulations shall determine all matters pertaining to the organization of the different branches of the service, the relations between the head-office, its delegations and branches, the power and authority of each department, and such other matters as are not covered by these By-Laws. The Board of Administration is empowered to settle any questions which may arise concerning the meaning or application of the By-Laws and Regulations, and also by means of special resolutions to take such actions as may be deemed necessary for the purpose of filling vacancies; and its reso-
262 lutions shall be valid and binding, subject to the final decision of the general meeting of share-holders.

Regulations of the Compañia General de Tabacos de Filipinas.

Article 43. The Vice-Director shall replace the Director in case of his absence or illness, and as such shall exercise the power conferred upon the latter.

Article 44. The Vice-director shall be the keeper of the keys and shall have one of the three keys of all the safes of the company.

Article 45. The Vice-director shall furthermore perform such duties as may be assigned to him by the council or by the Executive commission, and such special duties as may be entrusted to him by the Director.

Article 46. The General Manager in the Philippine Islands shall in that Archipelago perform such duties as the By-Laws and Regulations assign to the Director of the Company. As such it shall be incumbent upon him, in conjunction with the delegation, actively to promote the interests of the Company in those Islands and to repre-

sent it in all official and extra-official proceedings, and to use the signature. He shall report directly to the Director of the Company and through the Vice-President of the Delegation to the Council of Administration. As head of the offices in the Philippine Islands, the organization of the service and the distribution of the work shall be incumbent upon him, and it shall be his dutv to see that all affairs are kept up to date and conducted with a proper exact-
263 ness, he being responsible therefor to the company. He shall determine the force of employees and nominate such persons as he shall deem most fitted to occupy the respective positions.

Article 67. The provisions of this rule shall be understood as without prejudice to the liberty of the council of Administration to adopt general resolutions which may modify them, and such special resolutions as in each specific case it may deem necessary to pass.

The foregoing By Laws and Regulations of the Compañia General de Tabacos de Filipinas agree exactly with their originals which appear in the articles of incorporation of the said company, executed November 26, 1881, before Señor Don Luis Gonzaga y Soler y Pla, Notary of the College of Barcelona.

After the said articles had been literally copied, the document referred to was returned.

The attesting witnesses, Don Emidio Dammug and Don Severino Ageaoili, of age, inhabitants of this town, who were first duly sworn, being present at the execution of this instrument, and the same having been read by all present in the exercise of the right which the law grants them, the said Don Miguel Macias certifies it and all sign. To all of which and the identity, profession and residence of the said Macias I certify.

MIGUEL MACIAS.
EMIGDIO DAMMUG.
SEVERINO AGCAOILI.
[RUBRICADOS.]
FRANCISCO TACCAD,
Notary Public, Ex-Officio.

The foregoing is a literal copy of the original, which under the number given above is on file in my current protocol, the public instrument corresponding to this year, to which I refer, and at the petition of the said Miguel Macias I issue this first copy on
264 four sheets of common paper in Ilagan on date of its execution. So I certify.

FRANCISCO TACCAD.

A seal reading: Francisco Taccad, Notary Public, Ex-Officio.

Sworn Testimony of D. Jose Poo, Witness for the Plaintiff.

Q. Answer the general questions.

A. My name is Jose Poo; I am a resident of Iguig, province of Cagayan; I am by occupation a merchant and an employee of the Compañia General.

Q. Do you know the hacienda styled "San Luis y la Concepcion" in the towns of Cauayan and Angadanan? Do you know who has been in possession thereof, under claim of ownership, since the year 1883?

A. Yes, I know it, but it is possessed by the Compañia General de Tabacos de Filipinas under claim of ownership, and all this has been personally known to me since the year 1895, when I went to Cauayan as assistant store-keeper of the Company to buy tobacco.

Q. Did the planters who cultivated part of the lands included in the said hacienda recognize or not the ownership of the Compañia General de Tabacos de Filipinas of the said lands?

A. Yes, they recognized the ownership of the Company, and this is proved by the fact that in 1895 and in subsequent years they delivered their tobacco on appraisement to the company at the Cauayan store.

Q. Please read exhibit 13 and state whether you recognize as this the signature which with your surname and christian name appears at the foot thereof; and state whether you were present when this document was extended?

265 The witness having first read the document, replied: I recognize the said document and acknowledge the signatures which appear thereon as being in my own handwriting, and I was present when the document was executed.

Q. Showing you the amended complaint, state whether the persons whose names appear therein as defendants were on lands belonging to the hacienda on the same date when this contract was executed?

The witness, after reading the pleading, answered: All the persons whose names appear on exhibit No. 13 were on the lands of "San Luis y la Concepcion" when that document was executed; and those whose names do not appear thereon, but whose names appear on the complaint, were not at that time on the said hacienda.

Q. How do you know that all the persons who do not appear in the contract which you have just read were not on the lands included in the hacienda referred to, in the year 1896?

A. Because the manager at that time, Don Manuel Nieto, ordered the employés in his confidence to go over the whole estate and to summon all the squatters to take part in the execution of the contract, which they did; and when they came, they stated that there were no other persons upon the hacienda.

Cross-examination:

Q. You state that you have been an assistant in the employ of the Compañia General at Cauayan since 1895: Please state how it is that you know that the Compañia General is the owner of the hacienda of "San Luis y la Concepcion"?

A. Before that time I was aware of the Company's owner-

266 ship by statements which had been made to me; and since that time it has been known to me personally by reason of my having been there as assistant and having seen the tenants deliver their tobacco in acknowledgement of this ownership.

Q. Do you know up to what point the Compañia General's

property runs? and if all the persons alleged to have signed exhibit No. 13 were really living on the Company's property?

A. I do not know exactly where the company's property runs up to, but do know that all the persons who signed the contract were at that time living on the lands belonging to the Company.

Q. Was exhibit No. 13 signed on the same day by all the persons alleged to have signed it?

A. On the same day and in the same act.

Q. In whose house was that document signed?

A. In the house on the Minanga Rancho, but I don't know who was the owner of the house.

Q. How far was that house from the Company's store?

A. I cannot state exactly.

Q. Did the owner of the house also sign the document?

A. I have already stated that I don't know who the owner of the house was and therefore I cannot answer the question.

Q. How then was that particular house described to the people, so that they might go there?

A. I cannot answer the question, because I was not present when the orders were given for the people to meet there.

267 Q. Do you know of your own knowledge that all the persons at whose request exhibit No. 13 was signed were unable to write their names?

A. I don't know whether they really knew how to write or not; but the fact is that they stated that they could not at that time.

Q. Did the persons alleged to have signed this document know Spanish; and, if not, what dialects did they understand; and was the said contract translated to them into the said dialects, and by whom?

A. They stated that they did not understand Spanish, and as they knew how to speak Ibanag the contract was translated into that dialect by Señor Nieto, Señor Rodriguez, and Don Fulgencio Bunoan.

Q. Did these men alleged to have signed the document not make a mark or a cross,—that is those who did not know how to sign?

A. I don't know why they didn't make a mark or cross; but they consented to having some other person sign for them.

Q. Did the persons at whose instance you yourself signed exhibit 13 request you to do so knowing the contents of the said document?

A. Of course they knew the contents and we signed it indifferently for several of them, as they said that they did not know how to sign.

Q. Were you present during the whole time that exhibit No. 13 was signed by all the persons whose names appear thereon?

A. Yes sir.

Q. How do you explain that the signature of some of these men alleged to have signed the document appears with the christian name alone, without the surname, when these people were there and could have stated their surnames?

A. Because although they were asked several times they
268 said that they did not know what their surnames were.

Q. Do you personally know that all the persons alleged to have signed exhibit No. 13 came voluntarily to do it?

A. Of course they came voluntarily, as a mere notification to them was sufficient for the purpose.

Q. Do you know who gave this notification and how?

A. Señor Nieto gave the verbal order that notice be given the tenants.

Q. Were you one of those who notified those people?

A. No sir.

Q. Do you know who sent for them?

A. The assistant at that time, Don Manuel Rodriguez.

Q. Did you ever see the title deeds to the so-called hacienda "San Luis y la Concepcion"?

A. No sir.

Q. Do you know Juan G. Rodrigo?

A. No sir.

Q. Did you know the registrar in this province of Isabela in the year 1898?

A. Yes sir, I knew him.

Q. Do you know where he is at the present time?

A. I believe he is in Spain.

Q. Do you know on what date the insurgents took the town of Ilagan?

A. I don't know.

Q. Do you know when Rodrigo left this province?

A. I think it was when the Spanish prisoners were released.

Q. By the Judge: Were you in Cauayan as assistant for a long time?

A. I was there from August 1895 to February 1896.

Q. Do you know whether during that time the agreement or part of the agreement recorded in Exhibit No. 13 was performed on the part of the tenants?

269 A. Yes sir, it was performed: because they delivered their tobacco.

Q. In what month did they deliver their tobacco to the company?

A. In the months between August 1895 and February 1896.

Q. Do you know if all the persons named in exhibit No. 13 continued delivering their tobacco up to this date?

A. I don't know.

Witness has approved and signed the foregoing testimony.

JOSE V. POO.

Sworn Testimony of Manuel Rodriguez.

Q. Please answer the general questions.

A. My name is Manuel Rodriguez. I am a resident of Angadanan, and I am an employee of the Compañia.

270 Q. Do you remember having been on the hacienda of San Luis la Concepcion February 29, 1896, in company with Manuel Nieto, Jose Poo, Enrique T. de Andrade and Fulgencio Bunoan?

A. Yes, I remember, and I was there with another employee of the company, Juan Duran now deceased, and we went from house

to house of the squatters living on the lands of the company and told them to go to a house at Minanga, the name of whose owner I can no longer remember owing to the passage of time.

Q. What was the object of giving this message to the persons you have mentioned in your answer?

A. To get them to sign a contract acknowledging the ownership of the said lands by the company.

Q. Was any document written out?

A. Yes sir.

Q. Read exhibit No. 13 and state if it is the contract to which you have referred in your preceeding answer?

A. Yes, it is the same.

Q. Do you recognize the signature following at the foot of the said document as being your signature, in your own handwriting?

A. Yes sir, I recognize it.

Q. Was coercion, intimidation, deceit or other unlawful means used to force those people to sign?

A. No sir, before they signed the contract it was interpreted into Ilocano and into Ibanag by me and others who spoke
271 the dialect, and they consented and signed without any coercion?

Q. Do you know if they performed the contract?

A. From the time the contract was signed until the revolution broke out, they delivered all the tobacco to the company, but after that, owing to the disturbed conditions of the times, some of them made deliveries and others did not.

Q. Read the names of the defendants and state if on the date indicated on exhibit No. 13 these persons, now defendants, were on the land included in the hacienda of San Luis and La Concepcion?

A. If their names did not appear in the contract made in 1896, I can state certainly that they were not there, as I know almost all of them.

Q. Do you know the persons whom Señor Nieto instructed to go over the hacienda and call in the persons whose names appear in the contract?

A. Yes sir, I know those persons. The order was given to myself and Juan Duran, now deceased.

Cross-examination:

Q. Was the witness present this morning when Messrs. Nieto and Andrade testified in this trial?

A. No sir, I was outside and was not paying attention.

Q. How do you know that the persons alleged to have signed the Exhibit No. 13 were on lands belonging to the Compañia General de Tabacos?

A. Because since the year 1890 I have been employed by the company at Cauayan, and since the year 1894, two years before the contract, by order of my immediate superior, Don Enrique T. de Andrade, I had purchased the greater part of the Minanga

tobacco, and in the same year, 1894, I was a witness to the
272 verification of the boundary lines.

Q. Is this the reason why you know that the company was the owner of these lands?

A. In addition to this the general manager of the company told me so.

Q. Who verified the boundary lines which you refer to in that year?

A. Don Enrique T. de Andrade.

Q. Do you know if that gentleman is a surveyor?

A. I don't know whether he has a diploma or not.

Q. Do you know by whose orders Señor Andrade verified the boundaries.

A. By order of the chief, Don Augustin A. del Olmo.

Q. When you assisted at this survey, did you know both where the old boundaries were and also those which were fixed by the lines run as the new boundary?

A. No sir, I only went along to help that gentleman drive stakes and carry the chain.

Q. Did any woman sign the contract that you have referred to?

A. I don't remember, owing to the time which has passed.

Q. Then it is possible that some woman may have signed?

A. Not to my recollection.

Q. Were any women present among the people who were in the house when the contract was signed?

A. Yes, I can certainly say there were some women present.

Q. Who signed for Maria Palattao?

A. I do not remember.

The witness signed and approved the preceeding testimony.

M. RODRIGUEZ.

273 *Sworn Testimony of Baldomero Guillen.*

Q. Please answer the general questions.

A. My name is Baldomero Guillen. I am a widower and a resident of Tumauini, and am by occupation a merchant.

Q. Do you know the hacienda of San Luis and La Concepcion in Cauayan and Angadanan, and if so, who has been in possession of the said lands, as owner, from the year 1883 down to the present time?

A. I know the hacienda and know that it is possessed by the Compañia General de Tabacos up to 1888 by statements made to me, and since that time I have known that personally, having had occasion to examine the plan of the said hacienda.

Q. Do you know if any rectification of the boundaries of the said estate has been made at any time?

A. Towards the end of 1888 I went to the place in company with Juan Basa, who was at that time the Company's surveyor. I was assistant at San Antonio. I went there by order of my chief, Rogelio A. del Olmo, for the purpose of rectifying the boundaries,

my said chief having been informed that some persons were clearing land on that property, and finding that a small piece of land had been so cleared after this rectification was made, report was made to Señor Olmo, and he told us to go and tell the man who was making the clearing—his name was Manuel Daluidao—that if he could undertake to put up a fence on the part which he had cleared the company would let him have that land, and that gentleman agreed to this, and said that he had made the clearing believing that they were public lands. He put up a fence, and Juan Basa and
274 I returned to the colony of San Antonio to report to our chief.

Q. When you rectified the boundary lines, was there any protest on the part of the residents of the land included in said hacienda?

A. There was no protest, because there were no tenants there at that time, or at least there were no houses, but a field belonging to a man who lived in the rancho in front, I don't remember his name, and as we knew from the plan we were carrying that the land was his, we did not say anything to him. Moreover, this man accompanied us.

Cross-examination:

Q. Do you know how the boundaries of the hacienda of San Luis and la Concepcion are described in the title deeds which you say you have seen?

A. I do not know anything about the documents because, although I have seen them, it was only while my chief was glancing at them, and he said something to me about them which I can not recollect at the present time because this was fourteen years ago.

Q. Do you remember that your chief at that time mentioned the fact that the hacienda of San Luis and La Concepcion was bounded on the north by arable lands belonging to Joaquin Guzman?

A. I never heard that. All I know is that the field I mentioned is on the land of the hacienda because Señor Olmo ordered the storekeeper at Cauayan to speak to the owner of it to see whether he would sell it and he said he would not.

Q. On what part of the hacienda was that field to which
275 the foregoing answer refers, found?

(The witness, after looking at Exhibit 10, replies:

I had marked it on the plan, and without looking at the plan I can describe it as it is on the north part of the company's lands and about one third of the way, approximately, between Minanga and the ranch of Mabantad.

Q. Upon looking at the map, did not the witness state that the field to which he referred was of a different form on the map which he had from the form which he has given on map marked exhibit 10?

A. I did say but the plan which I carried with me was on a lesser scale than that which I have seen here in this artificial light, and it may be that the appearance of the perimeter has been changed.

Q. Are you a surveyor?

A. No, not at this time.

Q. Do you not know that the boundaries and the outline of a piece of land must be the same whether the map is on a larger or smaller scale?

A. Yes, sir, I know that, but at first sight it may not look the same.

Q. Going over the hacienda, did you see any monuments on the north or north-east part of it?

A. I *was* what Señor Basa drew my attention to while we were going by some clumps of bamboo or live trees which had been blazed.

Q. Do you know whether a Government Surveyor had ever surveyed the hacienda in question?

A. I know that when the company bought these lands that part of them belonged to Señor Casal and part of them to the government and that Rogelio Agustin del Olmo came to measure them
276 and that he was at that time an employee of the Forestry Department.

Q. Do you know if the said Rogelio Agustin del Olmo surveyed the estate by executive order?

A. I suppose so because he came by order of the General Inspector of the Forestry Department, where the order may perhaps be found if it has not been lost in this time.

Q. Please answer my preceeding question directly.

A. I insist upon the answer given, because I heard it from my chief, the said Señor Olmo.

Q. Then all you know as to an executive order you know by hearsay?

A. I know it by hearsay from the same person who did the work, and this person showed by his conduct that he was a serious man.

Q. Was rectification made by you and your companion, Señor Basa, of the boundaries of the hacienda in litigation, made on the north or north-east?

A. On the north-east and south, that is all.

Q. Which was the rectification which you made on the northeast?

A. I have already stated this and why.

Q. Have the kindness to repeat it again.

A. We did it by beginning at the part which adjoins Mabantad, then swung towards the north-east, and there we left the land upon finding a path by which we entered.

Q. Do you remember how long was the line you ran along the north-east?

A. I do not remember.

Q. Do you remember having gone over the part of the hacienda which abuts on the Carabatan rancho?

A. I do not know that rancho.

277 Q. You have heard Minanga rancho mentioned and know where it *it* is, don't you?

A. Yes, sir.

Q. Do you know the Andarayan rancho and — you know where it is?

A. Yes, sir, I have been all over these ranchos, because I was an employee of the Oriente as a tobacco buyer in the town of Nagilian, but I cannot state exactly the situation of these ranchos because they follow one another.

Q. Do you remember *of* the hacienda of San Luis and La Concepcion is bounded on the north east by public lands?

A. I do not remember.

Q. As tobacco buyer for the Oriente Company did you ever have occasion to buy tobacco on the Mabantad or Minanga ranchos?

A. No, sir.

Witness approved and signed this testimony.

(Signed) B. GUILLEN.

At this time and because of the lateness of the hour, the trial is postponed until tomorrow at 9:30, and the proceedings of the trial being hereby written in the above document; that all signed including Mr. Lienau who acted as interpreter to Mr. McDougall, and to all of which I bear testimony.

ISIDRO PAREDES.
VICENTE NEPOMUCENO.
R. McDOUGALL.
ROB. LIENAU.
FRANCISCO TACCAD.

Sworn Testimony of Enrique Taviel De Andrade.

(Witness for Plaintiff.)

Q. Please answer the general questions.

A. My name is Enrique Taviel de Andrade. I am a resident of Cauayan, and a merchant by occupation.

Q. Do you remember having been on the hacienda of San Luis and La Concepcion on February 29th, 1896, in company with Manuel Nieto, Jose Poo, Manuel Rodriguez and Fulgencio Bunuan?

A. Yes, sir.

278 Q. What did you do there?

A. We went to make a contract with some people who were there on the lands of the company.

Q. Please state if any document was drawn up?

A. Yes sir.

Q. Please read exhibit No. 13 and state if this is the same document to which you referred in your former answer?

(The witness, after examining the document, said it was the same one, and that it was signed by him).

Q. State if any intimidation, fraud or any other unlawful means were employed to induce these people to sign the document?

A. None of these means were employed. All that was done was to get Mr. Nieto to interpret the contract into the Ibanag dialect, and they agreed to its contents.

Cross-examination:

Q. Do you know what is the exact place that the persons alleged to have signed exhibit No. 13 lived?

A. They lived at the place generally known as Minanga.

Q. Do you know personally if at the time the contract marked exhibit 13 was signed, the persons who were alleged to have signed it were all personally present, or did the relatives or friends of some of them, or their wives appear and state they could represent some who were absent and authorized one of the attesting witnesses to sign the name of one who was absent?

A. They said that they were there personally.

Q. Then you can not state absolutely and positively that the names which appear at the foot of exhibit 13 were actually the
279 names of the persons who were there present?

A. I believe they were really the same.

Q. Do you know that every one of the persons alleged to have signed Exhibit 13 lived within the boundaries of the company's lands?

A. I believe so, because my guard went out to call them in.

Q. Was it intended that this contract marked exhibit 13 was to be signed only by persons living on the company's lands?

A. Yes sir, its purpose was to have them acknowledge the company's ownership.

Q. What led you to believe that this land belonged to the company?

A. The fact that I was the company's storekeeper and that my superiors had told me to take charge of these lands.

Q. In what part of the hacienda does the house in which you lived in 1896 stand?

A. I never lived on the hacienda but at Turâyon.

Q. Had the company any building on the Minanga part of the property in the year 1896?

A. They built the first ware-house in that very year.

Q. Do you know how many years the persons alleged to have signed exhibit No. 13 were living at Minanga before 1896?

A. I do not know.

Q. Does that first ware-house which you say was built in 1896 still exist?

A. I do not know because I left the service of the company in 1896, in May.

Q. So that since that time you have not had occasion to go through Minanga?

280 A. No sir.

Testimony signed and approved.

(Signed) ENRIQUE T. DE ANDRADE.

Sworn Testimony of Luis de la Vega.

Q. Please answer the general questions.

A. My name is Luis de la Vega. I am a resident of San Luis in the township of Cauayan. By occupation a merchant and an employee of the company.

Q. Did you accompany the surveyor, Gregorio Soriano, in 1901 when by order of the head man of the company he surveyed and rectified the boundaries of the hacienda of San Luis and La Concepcion?

A. Yes sir, and accompanied him during all the time the survey was being made.

Q. Please read the names of the 84 defendants and state if you know the various parcels of open field and building lots with the houses and ware-houses now in litigation between the Compañia General de Tabacos de Filipinas and the said defendants, also state if the said parcels are situated within or without the boundary lines of the said hacienda.

A. Yes sir, I know the said defendants, with the parcels of land they occupy with their houses and ware-houses, and all of them are within the boundary lines of the company's hacienda.

Q. How do you know that?

A. Because I accompanied the surveyor when the survey
281 was made and the lands rectified, and also because on the new plan I have seen that all these parcels are within the boundary lines.

Q. On what part of the estate were the lines rectified by the surveyor Soriano?

A. All over.

Q. Do you remember the old boundaries on the north and northeast before the rectification, and, if so, were they inside or outside the present lines?

A. Yes sir, I remember, and the old lines coincide everywhere with the present lines, but I remember that on account of alluvial deposits part of the hacienda that borders on the river has been increased.

Q. Please repeat the last part of that answer.

A. That the boundaries which appear by the rectification made by surveyor Gregorio Soriano coincide at every point with the former lines, and that all I saw was that the land was apparently augmented along the bank of the river which follows the Cornayan estuary.

Q. What was said to you about the land which belongs to the widow de Guzman?

A. I stated that the land near that place was somewhat augmented by the overflow of the river.

Q. Didn't you state before that the river had augmented the lands belonging to de Guzman's widow?

A. No sir.

Q. Then you mean to say that the river augmented the lands be-

longing to the Compañia General at both ends of the widow de Guzman's land and without favoring her lands in any degree?

A. No sir, I did not say that, and you may look at my
282 former answer.

Q. How did you determine that the lands near the land belonging to Guzman's widow are the same ones which are now shown by wire fences put up by the surveyor Soriano?

A. By means of the scientific instruments which a surveyor uses.

Q. How did you know which were the old lines on the whole hacienda?

A. In the first place the plan shows them, and in the second place, by signs which I found when going with the surveyor and which he renewed.

Q. To which plan do you refer?

A. To a plan of the Company which used to be on the hacienda.

Q. How long is it since you have been living in Minanga?

A. Approximately since October, 1901.

Q. And when was the survey made?

A. In December of the same year.

Q. Were you ever in Minanga before the date mentioned? October 1901?

A. Never.

Testimony approved and signed.

(Signed) LUIS DE LA VEGA.

Sworn Testimony of Mariano Claravall.

Resident of Cabecera and Justice of the Peace.

Q. Do you know Dionicio Respicio?

A. Yes sir.

283 Q. When did you know him?

A. Between 1893 and 1894.

Q. Where did you get acquainted with him?

A. Here in this town.

Q. What was his trade at that time?

A. Silversmith.

Q. How did you happen to know him?

A. Because in 1894, when the town festival was being held, I called upon him as a silversmith to solder the instruments of the town band.

Q. Did he reside here in this town?

A. Yes sir.

Q. Do you remember the place where he used to live?

A. Yes, it was in Baculud, inside of town.

Q. In what month is the town festival held?

A. It was in May, but that fiesta was postponed until the 24th of June.

Q. In what month was it that you gave him the instruments of the Ilagan band?

A. In the same month of May, 1894.

Q. You say that you knew Dionicio Respicio because he soldered the instruments which you delivered to him in May, 1894. How is it now that you say he has been living here since 1893?

A. Because in 1893 I was Gobernadorcillo of the town and because I saw the name of Dionicio Respicio on the lists kept by the head man of the barrios.

Q. How is it that you happened to remember having seen this name, which was the name of a man whom you didn't know at that time, among the innumerable names of the taxpayers?

284 A. Because on account of soldering the instruments to which I have referred, I made inquiry among the head men of the barrios, and said that if any one of them happened to have a silversmith in his barrio to send him to me, and it happened that Antonio Liquigan, now deceased, sent him to me, and told me that he had Respico on his list since the year 1893.

Q. Where did Respicio live before 1893?

A. I do not know.

Q. Do you know where he lived before 1894?

A. No sir.

Q. Do you know if he lived in Ilagan continually from June, 1893, to December, 1894?

A. I cannot say.

Q. Did he have his family in Ilagan?

A. No sir, he did not.

Q. How do you know that?

A. Because the list of inhabitants shows this fact.

Q. Are you acquainted with Domingo Respicio?

A. No sir.

Q. Have you ever seen the house of Dionicio Respicio?

A. No sir.

Q. Where did you see him for the first time?

A. In the court house.

Q. And how is it that you can remember after seven years that Dionicio Respicio was on the list as a man without family?

A. Because that man was so well known here in the town.

Q. Was he well known already in the year 1893?

285 A. I can not say.

Q. And when did this fame commence?

A. In the year 1894 when everybody regarded him as a very clever silversmith, and that is how I happened to call upon him for his services.

Testimony approved and signed.

(Signed) MARIANO CLARAVALL.

Number 14.

Court of First Instance of Isabela de Luzon.

NICOLAS LACASTE, DIONICIO CUNTAPAY, PEDRO CARIAGA, and MANUEL MEDINA, Plaintiffs,

vs.

DON MIGUEL MACIAS, on Behalf of the Compañia General de Tabacos de Filipinas, Defendants.

On December 19th last, Miguel Macias, in the name and on behalf of the Compañia Tabacalera, brought an action against the said Lacaste, Cuntapay, Cariaga y Medina for forcible entry and detainer and they not having appeared at the hour set, judgment was rendered against them by default.

On the 19th of April last passed, Mr. MacDougall, attorney at law, on account of the plaintiffs in this instance presented a petition to the court asking that the defendants be relieved from the performance of said judgment in accordance with article 113 of the code of civil procedure by reason of mistake, inadvertance, surprise or excusable neglect, and also by reason of fraud.

286 Señor Macias answered, denying all of the facts alleged by the plaintiffs as their cause of action.

After hearing the evidence offered, the Court stated that he was ready to go to the bottom of the affair, and that he was going to act upon the maxim that "Equity having taken jurisdiction for one purpose will take jurisdiction for all purposes."

Attorney MacDougall then presented an amendment to his petition in the record, from which petition it appears that Nicolas Lacaste, since 1896, has been in possession of three parcels of land; Dionisio Cuntapay has also possessed three parcels since 1894; Pedro Cariaga has also possessed three parcels since the year 1894, and Manuel Medina two parcels since the year 1897. He then proceeds to argue that his clients have acquired title by prescription of the said lands.

With respect to the prescription alleged, attorney Nepomuceno replied that this could not exist because a title by prescription requires uninterrupted possession for ten years when all claimants are present and twenty years when they are absent, with just title and in good faith.

Lacaste presented a possessory title in favor of Victor Guzman to a piece of land of an area of four hectareas. To this Señor Macias replied that he has nothing to say, and respects this statement, but that the lands in question are not the same ones which are described in that document.

Señor Macias also presented as evidence of the Tabacalera Company several titles and a map of the hacienda San Luis and la Concepcion.

287 Attorney MacDougall objected on the ground that this title was not recorded in the books of the Political Military government of the province, and furthermore that the inscription of these documents on the 17th of September, 1898, was void.

This argument was answered by Don Vicente Nepomuceno, who said that whatever might be the condition of the titles, there could be no doubt that the Compañia Tabacalera had been in possession for the term of more than ten years with good faith and with just title, and that this could not be said as to the plaintiffs in this case, who presented no recorded title whatever.

By virtue of the pleas of both parties and the titles presented, the undersigned Judge of First Instance orders that Miguel Macias, in the name and on behalf of the Compañia General de Tabacos de Filipinas, be restored to the possession of the lands in question by the sheriff of this court and that plaintiffs herein be enjoined hereafter from disturbing the Tabacalera Company in its possession, and that the plaintiffs also pay the costs of this court; that the tobacco of the present crop belongs to Nicolas Lacaste, Dionisio Cuntapay, Pedro Cariaga and Manuel Medina; also declaring that they shall not be required to pay any sum whatever as damages either in this court or in the court of the justice of the peace of Cauayan, and that they may remain on the premises for the sole purpose of gathering their tobacco of this crop for a period of thirty days from this date.

Ilagan, May 2, 1902.

JAMES H. BLOUNT, JR.,
Judge of Court of First Instance.

A true copy.

FRANCISCO TACCAD, *Clerk.*

288 (Heading and Caption.)

The plaintiffs object to the motion of the defendants for a new trial.

When the motion comes up for hearing we will truthfully state the reasons upon which this opposition is based, and at the same time present affidavits to controvert the facts stated in the paper filed on the 29th inst.

Ilagan, December 31, 1902.

VICENTE NEPOMUCENO,
Attorney for Plaintiffs.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of the Justice of the Peace of Ilagan.

I, Gregorio Soriano, a native of Cabagan Viejo, an inhabitant of Ilagan, province of Isabela, swear that I testified as a witness in the suit brought by the Compañia General de Tabacos de Filipinas against Miguel Tupiño and 83 others and it is not true that I changed the boundaries of the extension of the hacienda of San Luis and La Concepcion in that part of it adjacent to the lands belonging to Joaquin de Guzman, and this can be proven by a careful examination of the original, which does not show either erasures or amendments. What I did say was that on the north part of the land of Joaquin Guzman, which is bounded by the

Cagayan river, it had been increased and thus on the map which I drew up at that time Joaquin Guzman's land was shown as having increased by alluvion on the river side, but this had no influence whatever in the ratification of the boundary lines.

289 Ilagan, December 29, 1902.

GREGORIO SORIANO.

Signed and sworn to before me in Ilagan December 29, 1902.

MARIANO CLARAVALL,
Justice of the Peace.

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of the Justice of the Peace of Ilagan, Isabela, P. I.

I, Manuel Nieto Noriega, a Spaniard of full age, an inhabitant of Tuguegarao, head town of Cagayan, solemnly swear that the charges made against attorney Vicente Nepomuceno, a lawyer for the Compañia General de Tabacos de Filipinas in the civil action brought by the said company against Migual Tupiño and others in the court of first instance of this province, to the effect that one day during the trial of said case, the said attorney left his seat to come over to where I was sitting and whisper to me before I answered a question which was being addressed to me by the attorney for the defendants, Mr. MacDougall, is false. The fact is that as attorney Nepomuceno questioned me concerning the authenticity of signatures, names and titles of a written contract which plaintiff company in said action had presented as evidence therein, he left his seat in order to come over to where I was sitting and show me the said document, so that I might answer his question with precision, and this was done by the said attorney with the consent of the judge first asked and obtained.

Ilagan, December 29, 1902.

M. NIETO.

Signed and sworn to before me in Ilagan December 29, 1902.

(Signed) MARIANO CLARAVALL,
Jus. of Peace.

290 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of the Justice of the Peace of Ilagan.

I, Francisco Balbas y Alvarez, a Spaniard and a resident of this capital, solemnly swear:

First. That it is an absolute falsehood that attorney Nepomuceno, a lawyer for the Compañia General de Tabacos de Filipinas, in the action brought by the said company against 84 trespassers on its lands in San Luis and la Concepcion, left his seat during the trial of said suit to go over to where the witness Nieto, Noriega and Flores were sitting for the purpose of giving assistance to them con-

cerning the cross-questions which were being addressed the witnesses on behalf of attorney MacDougall by his lieutenant, Lienau, because what occurred was that as it was necessary for these witnesses to have before them certain documents in evidence in order to answer certain cross questions presented to them by Señor Nepomuceno, it was for this purpose alone that he left his seat.

Second. That the statement made by attorney MacDougall to the effect that the court, notwithstanding his objections and protests, would not prohibit the continuation of this conduct on the part of the plaintiff company's lawyer is as false as the former statement, because it is a falsehood to say that such objections and protests were made, and there could be no ground for making them because Mr. Nepomuceno was most exemplary and did not call for the slightest reprimand on the part of the Court or of the attorney for the trespassers.

291 Third. That it is also a false and slanderous statement that the court prohibited the said MacDougall from making certain cross-questions or that he said that they were sufficient to overcome the serenity of the most self-possessed of men, because all the court did was to urge him, for the sake of a speedy administration of justice, to have the kindness to form questions which should be less idle and more relevant, because the questions which he was forming were absolutely foreign to the matter and were enough to disconcert the most self-possessed of men. Consequently, the falsity of this statement has been demonstrated and it has been shown that instead of a prohibition being laid upon him, a polite request was made which, if public rumor can be believed, he did not deserve.

Fourth. That it is a false, or more so, as the preceeding statement that the witness Soriano had admitted that he had changed the lines on the hacienda San Luis and la Concepcion on a map presented in evidence, because what this witness stated, according to the spirit of his answer, was that the land of Joaquin Guzman as bounded on the river might be increased or diminished.

Fifth. That it is also false that attorney Nepomuceno said to Soriano that he was not to appear to be too willing, and that if he did not remember well to answer that he did not know. What this attorney did say to the witness when MacDougall and Lienau were examining the plan and these two were torturing him with questions and remarks was that he should pay strict attention to this document so that he might answer with a full knowledge of the facts.

Sixth. That it is unquestionably false that the questions
292 put in the mouth of the court were addressed to Justo Allam, as the only questions which the court addressed to this man appear in record in connection with his testimony.

The undersigned swears again that each and every one of the statements made by the defendants in the motion paper of which he has had a copy before him are absolutely false. He concludes by stating that these facts are known to him because he was present at the sessions of the court at which the facts occurred.

Ilagan, December 29, 1902.

F. BALBAS.

Signed and sworn to before me in Ilagan, December 29, 1902.
(Signed) MARIANO CLARAVALL,
Justice of the Peace.

Hearing on Motion.

In the Court of First Instance of the Province of Isabela de Luzon, December 31, 1902.

Before the honorable Judge, assisted by me, the Clerk, personally appeared the parties; the plaintiff represented by its attorney Vicente Nepomuceno, and some sixteen of the defendants who appeared in their own behalf and in behalf of their co-defendants.

The Court having been declared open, the moving parties, to wit, the defendants, were granted a hearing, who then stated that they referred to the motion for the new trial made upon the grounds in the motion paper presented on the 29th inst.

293 Attorney for plaintiffs stated that he waived the period of three days to which he is entitled under the rule as notice prior to a hearing of such motion for the purpose of saving time, and at once presents his written opposition, together with affidavits of Gregorio Soriano, Manuel Nieto and Francisco Balbas, copies of which were at the same time served upon each of the defendants. He further argued upon the grounds of his opposition and refuted the first and second grounds of the motion and part of the third, and declined to argue upon the other grounds stated as they contained untruthful allegations which are insulting to the court. The defendants insisted upon the motion and the judge, having heard the arguments by both parties, entered the following order:

294 *Decision.*

Article 145 of the code of civil procedure gives the following reasons as grounds authorizing a new trial: Accident or surprise, newly discovered evidence, or the belief on the part of the Judge that his decision was contrary to the law or not supported by the evidence.

The motion is not founded upon either of the two first grounds indicated, but only on the latter, and that without sufficient reason. This motion contains nothing but mis-statements and offensive and insulting falsehoods concerning the Court and, on the other hand, repetitions of arguments which have been already passed upon by the rulings during the trial or by the decision.

The reasons given under No. 1 and 2 are false. The third ground and arguments by which it has been sought to support it have already been decided as stated in the course of the trial, and also by the judgment, although in the judgment they were referred to in general terms, naturally. The fourth ground is not true and is highly insulting to the Court. The words addressed by the attorney for the plaintiff to the witness M. Nieto were for the purpose of calling his attention to Exhibit No. 13, and the attorney arose from his

seat for the purpose of showing this document to the witness, who was, owing to his defective sight, unable to see or read it. It is false that the attorney for the defence made any objection, as it is also false and insulting to say that the Court did not prevent this notwithstanding the supposed objections. No one has been prohibited from questioning or cross-questioning any witness. All the rulings during the trial, whether favorable or unfavorable to either of the parties, have been duly entered in the record. The words
295 addressed by the attorney for the plaintiff to the witness Soriano were for the purpose of calling his attention, so that he might testify calmly and with a full knowledge of the facts.

The fifth ground is also false and insulting. All the questions which the court addressed to Justo Allam were for the purpose of assuring himself as to the veracity of the witness, who testified in such a vacillating way, hesitated and changed color. In all the courts in the world Judges are at liberty to examine and question witnesses for the purpose of convincing themselves as to whether or not they speak the truth.

The motion for a new trial is denied, and in accordance with the provisions of section No. 107 of the code of civil procedure the false allegations are stricken out, upon the ground that they are inapplicable, irrelevant, redundant and insulting, as they appear in the motion papers under the numbers above mentioned, with the express condition that if the defendants again make such statement they will be prosecuted under the law and be punished according to their merits, or else this will be done with respect to those who drew the motion papers, of the contents of which the defendants were doubtless in ignorance. So ordered.

This decision having been published immediately, the parties were informed thereof and the Court adjourned and thereupon these min-tes were prepared and signed by those who knew how to write, together with the Judge, to which I certify.

ISIDRO PAREDES.
VICENTE NEPOMUCENO.
NICOLÁS LUCAS.
DIONISIO RESPICIO.
BASILLO GASPAR.
BARTOLOMÉ GUITANG.
MÃRCELO CRISTOBAL.
AGUSTÍN HIPÓLITO,
Intérprete Of-icial.
FRANCISCO TACCAD.

296 *Sworn Testimony of Nicolas Lacaste, Resident of Minanga, Cauayan, a Farmer by Occupation.*

Q. Do you know Eulalio Eugenio?
A. Yes sir, I know him.
Q. Where does he live?

A. With his father in Minanga.
Q. Since when?
A. Since the year 1887 they have been in Minanga; and that was when I went to Minanga for the first time.
297 Q. How is it that when you went there for the first time you happened to know Justo Eugenio and Eulalio Eugenio?
A. Because when I went to visit Victor Guzman, I went by the house of these people and got acquainted with them.
Q. How long is it since Eulalio has had a field?
A. Yes sir, his father had one,—that is Justo.
Q. Do you know Victor Mendozo?
A. Yes sir, I know him.
Q. Where does he live?
A. In Minanga.
Q. Since when?
A. Since 1900.
Q. Has he any fields?
A. Yes sir.
Q. Do you know Pedro Madariaga?
A. Yes sir, I know him.
Q. Where does he live?
A. In Minanga.
Q. Since when?
A. Since 1900 also.
Q. Has he any fields?
A. Yes sir.
Q. Do you know Lorenzo Padilla?
A. Yes sir, I know him.
Q. Where does he live?
A. In Mabantad.
Q. Since when?
A. Since 1897.
Q. Has he any fields?
A. Yes sir, he has.
298 Q. Do you know Gabriel Cuntapay?
A. Yes, sir.
Q. Where does he live?
A. In Minanga.
Q. Since when?
A. He was already there when I went to live there in 1897.
Q. Has he any fields?
A. Yes, sir.
Q. Do you know Ventura Respicio?
A. Yes, sir.
Q. Where does she live?
A. In Minanga.
Q. Since when?
A. Since 1900.
Q. Has she any fields?
A. Yes, sir, she has.
Q. Do you know Ubaldo Taguilan?

A. Yes, sir.
Q. Where does he live?
A. In Minanga.
Q. Since when?
A. He was there when I went there to live in 1897.
Q. Has he any fields?
A. Yes, sir, he has.
Q. How old should you say Eulalio Eugenio would be at the present time?
A. I should think he was about twenty five.
Q. How do you know that his field is the same as that of his father?
A. Because Eulalio Eugenio is deaf and can not work alone.
Q. What are your relations with Eulalio Eugenio's father?
299 A. Those of a mere acquaintance.
Q. Have you never been on terms of intimacy with him?
A. No, sir.

This testimony approved and signed.

NICOLAS LACASTE.

Sworn Testimony of Dionicio Respicio, a Resident of Mabantaa, Cauayan, a Farmer.

Q. Do you know Urbano Agcaoili?
A. Yes, sir, I know him and he lives in Mabantad.
Q. Since when has he lived there?
A. For more than a year.
Q. Do you know Sabas Cristobal, and if so, where does he live?
A. Yes, sir, I know him and he lives at Mabantad.
Q. Since when have you known him?
A. I have known him in Mabantad for the last five or six years.
Q. Has he any fields?
A. Yes, sir, he has.
Q. Do you know Esteban Corpus?
A. Yes, sir, I do.
Q. Where does he live?
A. Also in Mabantad.
Q. Since when have you known him?
A. For the last eight years.
Q. Did he have any fields in Mabantad in that time?
A. Yes, sir, he had.
Q. Do you know Platon de la Cruz?
300 A. Yes, sir.
Q. Where does he live?
A. In Mabantad.
Q. Since when?
A. For the last four years.
Q. Has he had any fields during that time?
A. No, sir.
Q. For whom does he work?

A. For me.
Q. Do you know Juan Fernando?
A. Yes, sir, I know him.
Q. Where does he live?
A. In Mabantad.
Q. Since when?
A. For the last two years.
Q. Has he any fields?
A. He has not.
Q. For whom does he work?
A. For me.

This testimony signed and approved.

DIONICIO RESPICIO.

301 (Title, Court, Cause.)

Extract from the Minutes of the Session of the Court Held on March 30, 1903.

On the meeting of the Court in public session the hearing was called of the motion presented by the Compañia Tabacalera in cause No. 1244, Compaña General de Tabacos de Filipinas contra Tupiño y otros, the object of the motion being to obtain new securities on the bond offered for the suspension of the execution of the sentence, Don Francisco Dominguez appearing for the Compañia Tabacalera, and Mr. Aitken for the appellants.

Immediately thereafter was heard the motion filed by the defendants and appellants in which they asked that certain documents alleged to have been improperly included in the bill of exceptions by the Clerk of the Court below be ruled out, presenting arguments in support of these allegations. After the argument the motions were submitted to the Court to be passed on in due course.

(Court, Title, Cause.)

Decision.

The order issued by the Court of First Instance approving the bill of exceptions is as follows:

"The bill of exceptions hereunto annexed is admitted and the Clerk is ordered to annex it to the record in accordance with Article 143 of the Code of Civil Procedure, to certify the said bill at once as well as all documents therein cited as an integral part thereof as well as the separate documents which the opposite side may wish to present in addition thereto, and transmit all to the Supreme Court."

Relying on this order the appellee has caused to be sent up here together with the bill of exceptions a multitude of distinct docu-
ment- certified by the clerk. The appellant now asks that the
302 Court eliminate all these documents from the bill of exceptions.

Among the documents sent up at the request of the appellee are a bill of exceptions and the accompanying documents which refer

exclusively to the granting of a preliminary injunction and to the denial of a motion for the dissolution thereof. This bill of exceptions was prepared by the defendants now the appellants. They did not urge the progress of this bill, and as a matter of fact abandoned or left it. We declare that this one cannot be considered a part of the other bill of exceptions which the defendants are inclined to push to an issue in order the sentence rendered may be revoked. None of these documents, therefore, should be printed.

2. The eighty defendants to the record filed separate answers. These answers are all the same. The appellants have joined a copy of one of them to the bill of exceptions, and it will be printed. The appellees have caused the other seventy nine answers to be sent up here, and ask that they be printed. It might perhaps be said that they ought to be considered a part of the bill of exceptions for the purpose of showing that all these defendants actually appeared and made answer. But it is unnecessary to print them. They may remain as part of the bill of exceptions which the appellee annexes thereto relying on the judicial order already set out, but for the time being the clerk is informed that he have none of them printed.

3. The bond provided by the defendants with the purpose of suspending the execution as well as the motion and the affidavits in support of it are not a part of the bill of exceptions and will not be printed.

4. The other documents in the record will be printed as part of the bill of exceptions without our making, for the moment any finding as to their materiality. This we cannot do before the case is tried.

303 5. This motion has been decided without reference to the form in which these documents have been prepared and brought up to this court. The form is very irregular.

(1.) It is improper for the judge to sign a bill of exceptions to the effect that the appellee may annex thereto all the documents that he chooses so to annex.

It is improper for the judge to sign a bill of exceptions unless he is informed that the opposite side has been notified in due form of the presentation thereof. If the adverse party should appear before him the judge should not sign the bill until the party in question has specifically offered any amendments or additions that he may desire to introduce, and until the judge has determined as to wh-ther they should be approved or denied, and has, moreover, set out in precise terms in the bill of exceptions such amendments and additions as have been allowed.

(2.) The clerk should not have sent up here as he did, a large number of detached papers. The bill of exceptions sent up by the clerk should consist of a single document which he certifies to be the bill of exceptions in the case, together with the documents to which it refers.

So ordered.

(Signed) CHARLES A. WILLARD,

With Whom Arellano, Florentino Torres, and Fletcher Ladd Concur.

(Court, Title, Cause.)

I hereby notify you that on the tenth day of August, 1903, at nine o'clock in the morning, or as soon thereafter as appellannts' counsel may be heard, said counsel will pray said Court to grant them thirty days more, to count from the twenty seventh day of July 1903, for the presentation of appellants' brief. This motion will be based on the reasons set out in the record.

Manila, P. I., 25th of July, 1903.

(Signed) THOMAS D. AITKEN.
PILLSBURY AND SUTRO.

304 (Title, Court, Cause.)

Mr. Thomas D. Aitken, Counsel for Appellant.

SIR: You are hereby informed that the plaintiff and appellee will present a motion — this Hon. Court on the 10th of August next at nine A.M., or as soon thereafter as counsel maybe heard, to the effect that the appeal against the judgment rendered in the above mentioned cause be declared vacated on account of the reasons which appear in the affidavit annexed to the cause in question.

Manila, P. I., 28th July, 1903.

(Signed) FRANCISCO DOMINGUEZ,
Counsel for Plaintiff and Appellee,
Victoria, 199 *Intramuros.*

Received a copy of this paper with the annexed affidavit, on this date, the 28th July, 1903.

(Signed) THOMAS D. AITKEN.

(Title, Court, Cause.)

D. Francisco Dominguez Valazquez, attorney-at-law, appearing for the Compañia General de Tabacos de Filipinas, appellee, being duly sworn alleges:

1. That yesterday the term of thirty days expired which is granted to the appellants according to the rules of procedure of this Honorable Supreme Court for the purpose of transmitting to the appellee printed copies of their brief with the statement of the supposed errors of law, without their having thus transmitted it.

2. That the appeal should be duly declared vacated, in accordance with what is laid down in Article 23 of said Procedure.

I ask this Honorable Supreme Court to declare the appeal which is the subject of this motion vacated, with costs to the appellants.

305 (Continued.)

Manila, P. I., 28th July, 1903.

(Signed) FRANCUISCO DOMINGUEZ,
Counsel for Plaintiff and Appellee,
Victoria, 199 *Intramuros.*

Subscribed and sworn to before me this day the 28th of July, 1903.

[SEAL.] E. H. COLE,
Assistant Clerk of the Supreme Court of the Philippine Islands, ex-Officio Notary Public.

(Title, Court, Cause.)

Extract from the Minutes of the Session of the Court Held on the 10th of August, 1903.

On the calling of the hearing of the motion offered by Messrs. Aitken, Sutro and Dominguez in case No. 1244, entitled La Compañia General de Tabacos de Filipinas *v.* Miguel Tupiño *et al.*, the first two asking that an extension of thirty days be allowed them for presenting their brief, and the last named asking that the appeal be declared vacated on the ground that the appellant has not transmitted its brief, Mr. Aitken appeared on behalf of the plaintiffs and appellants, and Sr. Dominguez on behalf of the defendants and appellees; the Court on consideration of the motion decided as follows: The motion of the appellee is denied and the appellant is granted an extension of thirty days to run from the 26th day of July 1903 in which to present its brief and the Clerk is hereby authorized on the application of the appellee, and with five days' notice to the opposite party to set this case for any date during the months of September, October, or November 1903, at which it may be ready for trial.

(Title, Court, Cause.)

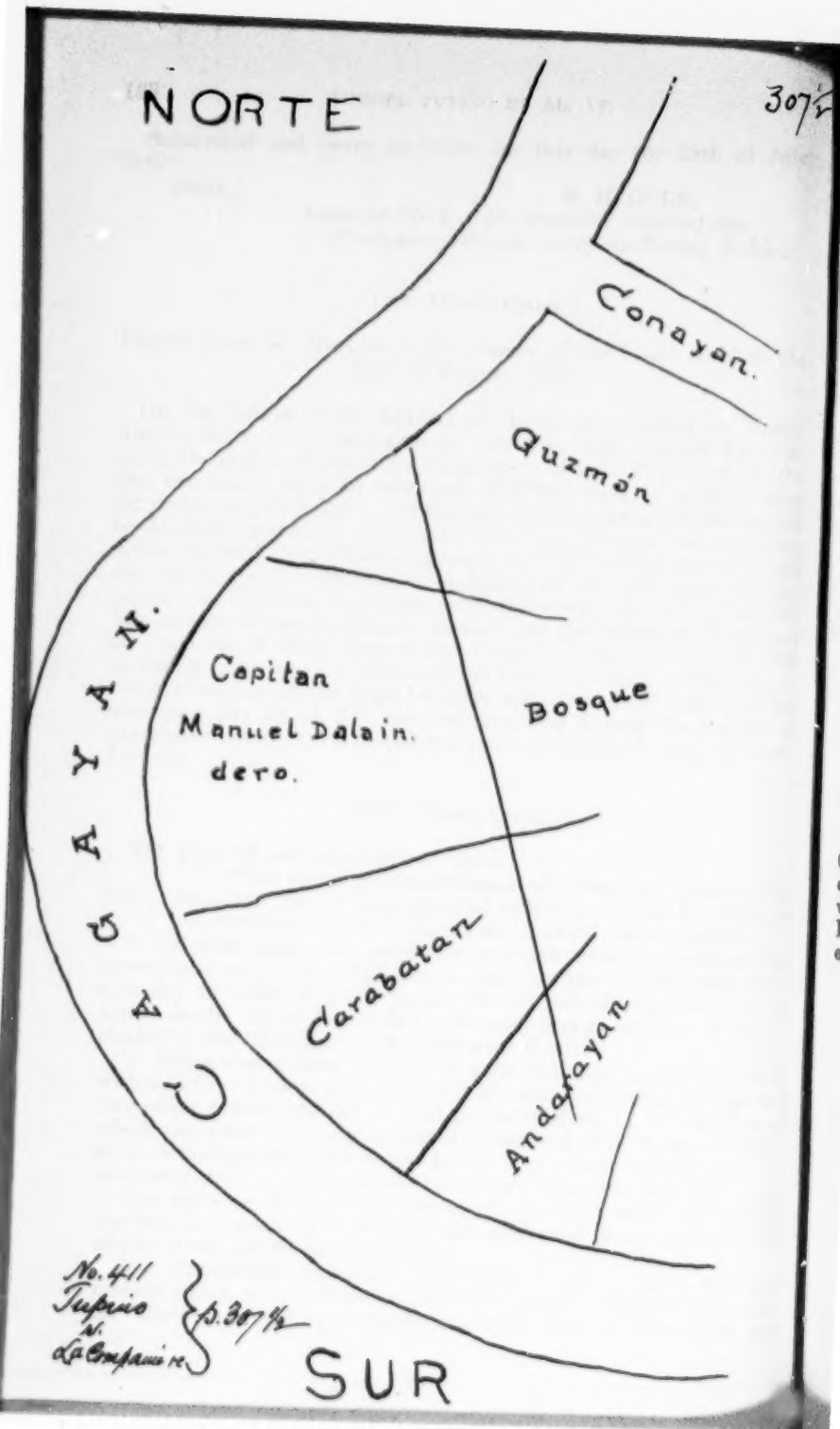
The plaintiff and appellee *and* says:

1. That yesterday the extension of thirty days' time to run
306 from the 26th of July granted to the appellants in which to present their brief in the above entitled cause expired.

2. In order that your petitioner may ask what his interests demand he is under the obligation of notifying the adverse party from this day in order that the proper motion which may be filed be heard on the 7th of September next according to section- 11-13 included of the Procedure of this Supreme Court.

3. As the case at issue involves the possession and property of lands withheld from your petitioner, and is of nature requiring prompt and immediate action, bearing on that public welfare, in the interests of which this party to the cause should be restored to its rights by virtue of a judgment rendered in its favor, it therefore results that the procrastination in the course of this appeal causes incalculable injury to this party to the suit; and the appellants have consumed double the time in presenting their brief that is allowed them by Section 21 of the above mentioned Procedure.

4. I respectfully pray this Honorable Court to hold that the motion which your petitioner desires to present requires immediate consideration according to Section 11 of the Rules of Procedure, and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to order, in accordance with Section 12, that notice of the hearing of the motion aforesaid be given five days in advance, in order that, if notice is given tomorrow the motion may be heard on the 31st of the present month, as is asked in accordance with the law.

Manila, 25th August, 1903.

FRANCISCO DOMINGUEZ,
Counsel for Appellee.

307 (Title, Court, Cause.)

Extract of the Proceedings of the Session of the Court of the 27th of August, 1903.

The Clerk having duly noted a document presented by Don Francisco Dominguez in case No. 1244, La Compañia General de Tabacos de Filipinas *v.* Miguel Tupiño *et al.* praying that notice be given five days in advance of the motion which the said party desires to prepare in order that it may — heard on the 31st of the present month, the Court, on being informed thereof said: Petition denied.

(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands, ex-Officico Notary Public.

(Title, Court, Cause.)

To the Honorable the Supreme Court of the Philippine Islands:

The appellants in this cause respectfully petition this Honorable Court to order that there be annexed to the record the certified copy of the map which is herewith annexed, drawn by Manuel Dalauidao when he testified in the above entitled cause in the Court of First Instance of Isabela Province, which map is mentioned in the bill of exceptions on page 120 thereof.

Respectfully,

(Signed) THOMAS D. AITKEN,
PILLSBURY AND SUTRO,
Counsel for the Appellants.

Received copy this 12th day of November, 1903.

(Signed) F. DOMINGUEZ.
(Signed) H. D. McGEORGE,
Deputy Clerk.

(Here follows map marked page 307½.)

308 I, Francisco Taccad, Clerk of the Court of First Instance of Isabela de Luzon of the First Judicial District of the Philippines

Certify: That the map herewith presented is a faithful and exact copy of its original which appears in the record related thereto, drawn by Don Manuel Dalumidao, and in order that it may appear of record I issue this document in Ilagan on June 1st, 1903.

(Signed) FRANCISCO TACCAD, *Clerk.*

(Title, Court, Cause.)

"*Extract of the Proceeding- of the Session of the Court of this* 30*th November,* 1903.

"On the meeting of the Court in public session the hearing was called of the motion made by Sr. Francisco Dominguez in case No. 1244, entitled La Compañia General de Tabacos de Filipinas *v.* Miguel Tupiño *et al.* asking that the amount of the bond be increased to $30,000.00 Mexican currency which ought to be provided by the defendants and appellants in favor of the plaintiff and appellee to be applied to the fulfilment and execution of the sentence rendered by the Court in this cause; Sr. Francisco Dominguez represented the plaintiff and appellee, and Mr. Aitken the defendants and appellants. The arguments on both sides having been heard the motion was submitted to the Court which reserved decision thereon."

(Title, Court, Cause.)

To the Honorable the Supreme Court:

The plaintiff and appellee respectfully petitions the Honorable Court to deny the motion presented by the appellants asking that the certified copy of the plan or map drawn by Manuel Dalauidao in the above entitled cause be made a part of the record, for the following reasons:

1. Because there was no petition to make it part of the record during the period or term which article 143 of the *of the*
309 Code of Procedure in force states cannot be extended.

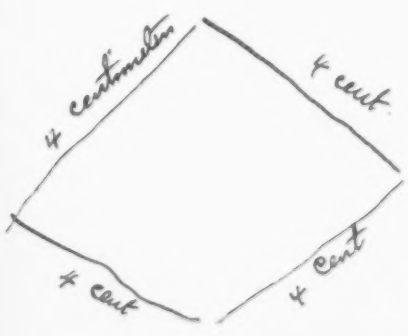
2. Because the sketch in question cannot be considered a plan or map, nor can it serve as a substitute for such for the following reasons:

The first requisite of a plan or map is that it cause to appear the scale to which it is graduated, that is to say, it should show the comparative size of the lines of the map itself and those of the land which those lines represent. In the sketch in question there is no way of determining the actual length of any of the lines represented, consequently whichever may be the line of division there would be the same result as in the plan or any other lines drawn 20 kilometers apart.

Suppose, to take a more simple example, that the land in issue is in the form of a perfect square; it would be represented on paper by another square, but in the absence of a scale each side might be

drawn to the scale of a hundred thousand to the kilometer or to the scale of a half meter to the kilometer. Could such a graphic reproduction be of any value whatsoever? Could any venture to buy a lot of land affirming that such a sketch was a plan of the land that he was in the act of purchasing? Although a plan may not indicate the four cardinal points if it shows the scale to which it is drawn is useful as such, because at every moment it points out clearly not only the length but the direction of all its lines, and by means of this it is possible to determine without question the surface or area covered; but *but* the map which indicates the North, the South, etc., without any scale, like the one in question is good for nothing, because no one, unless he speak as his fancy dictates and wholly without foundation can state what the distance is between two of its points, or what direction its lines take, or, much less how many hectares are confined by these lines.

310 And it is not enough that the maker of the sketch points out and says that through forgetfulness he failed to make it appear that such a distance, for instance equalled so many metres, for even knowing all the measurements of the outlines of the sketch this would give the area; it is necessary that the inclination of some lines toward others be given, as the following sketches wherein the lines are of equal distances will convince even persons unversed in map making.



The perimetr-s are identical in length; but is it not, nevertheless instantly apparent that there is a great difference in the areas?

The sketch must be, then, at best, a rough draft, a hasty delineation of a plot of land, made by guess, without the use of measures or any topographical instrument, and consequently must be completely unreliable.

The boundaries not having been fixed, how is it possible to determine the area bounded by them? and even if the length of the

boundaries were known, the above figures show that the area cannot be determined by the length of the boundaries alone.

Manila 30th Nov. 1903.

(Signed) FRANCISCO DOMINGUEZ,
Counsel for Plaintiff and Appellee.

Received copy 30th November 1903.

(Signed) W. H. LAWRENCE.

Filed by the deputy Clerk of the Court, Dec. 1, 1903.

H. D. McGEORGE.

311 (Court, Title, Cause.)

Extract from the Proceeding- of the Session of the Court of this Second of December, 1903.

"On the meeting of the Court in public session the hearing of case No. 1244 was called entitled the Compañia General de Tabacos *v.* Miguel Tupiño *et al.* The defendants and appellants were represented by Mr. Lawrence, and Messrs. Kincaid and Dominguez represented the plaintiffs and appellees. The arguments of both sides having been presented the matter was submitted to the Court to be passed on in due course.

(Signed) BLANCO.

312 *Decision of the Supreme Court.*

THE COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiffs and Appellees,

vs.

MIGUEL TUPIÑO ET AL., Defendants and Appellants.

ARELLANO, *C. J.:*

The object of the complaint is the recovery of possession of certain parcels of land in the possession of the defendants and the ejectment of the latter, together with the sum of $9,000 as damages and the costs of suit. In support of the complaint documentary evidence and oral testimony have been introduced.

That the parcels of land sued for are within the perimeter of the hacienda of San Luis y La Concepcion is one of the findings of fact included by the judge in his decision and against which we have not found in the course of our revision of the evidence anything to show that the finding was erroneous. On the contrary, the correctness of this finding must have been recognized by the defendants, as their defenses could not be taken into consideration except upon this assumption. The evidence introduced by the defendants in support of the alleged ownership attributed to Joaquin Guzman is
313 adverse to their contention, because it shows that the area of that property is much less than that of the parcels of land

sued for. With respect to the property alleged to belong to Manuel Dalauidao, all the documents offered have failed to show either the situation or area. This contention was made solely in opposition to the ownership alleged by the complaint, the defendants not having opposed the ownership alleged in the complaint by any right inherent in themselves. If they were merely tenants of the lands in question, holding under some other person whom they supposed to be the owner, they were not proper parties defendant, and this was a defense which they should have made at the trial.

The defendants did not present any title deeds, nor did they prove an adverse possession on their own behalf sufficient to overcome the recorded title deeds which the plaintiff presented in support of the complaint.

After the inscription of title deeds in the Register of Property, the only owner of the recorded property is the one who appears as such on the books of the Register until the record is canceled by a final judgment. There is no reason for ordering the cancellation of the inscription unless this relief is prayed for and proof is made of a better right on the part of some other person who claims to be lawful owner or possessor. In this case there has been no demand for the cancellation of the inscription in the Registry of the hacienda of San Luis y La Concepcion in favor of the Compañia Gen-
314 eral de Tabacos. It has been alleged that the inscription is defective, but no person entitled to maintain an action for the purpose has instituted proceedings for the cancellation of that inscription. As long as the inscription subsists it must produce all its effects.

To allege the nullity of the original title deeds executed by the Spanish Government in favor of the original grantees of the lands in question is to allege the nullity of the contract entered into between the Spanish Government as grantor and them as vendees, for the titles are simply evidenciary of the sale for a certain consideration of a specific thing. Under the provisions of article 1302 of the Civil Code, the action for the annulment of contracts can only be maintained by those who are bound, either principally or subsidiarily, by virtue thereof. The defendants not being persons bound either principally or subsidiarily by virtue of that contract of sale between the Spanish Government and those original grantees they can not maintain the action of nullity of which they seek to avail themselves as a defense in this suit. And it is logical that it should be so. The nullity of an obligation being declared, the contracting parties must reciprocally restore the things which have been the object of the contract. (Art. 1303.) If the nullity of the title deeds referred to should be declared in conformity with the contention of the defendants, the lands should be restored to the Spanish Government and the price paid for them should be restored by that Govern-
315 ment to the original grantees or their *or their* successors. It would follow that the lands in question could not remain in the possession of the defendants, because they would have to be restored to the vendor, nor could the latter be compelled to restore the price, not having had an opportunity to be heard in this suit.

We therefore affirm the judgment appealed, with the costs of this instance to the appellants. So ordered.

C. S. ARELLANO.

Torres and Mapa, JJ., concur.

JOHNSON, J., *Concurring:*

I conform in the opinion written by Chief Justice Arellano, but because it has been contended that his opinion is contrary to the weight of authority in the United States I desire to add to this opinion a citation of American Authorities upon the question presented here.

This was an action to recover possession of certain real estate by the plaintiff, located in the Province of Isabela, on the island of Luzon, in the Philippine Archipelago. The action was brought on the 20th day of October, 1902, and the trial was commenced on the 11th day of December and was terminated on the 24th day of December, 1902.

The cause was tried in the Court of First Instance of the Province of Isabela. After hearing the evidence the Court found that the plaintiff was entitled to the possession of the property and
316 issued an order directing that it be put in possession of the same.

The record discloses that on the 20th day of October, 1882, Doroteo Faustino and fifty-nine others denounced sixty separate parcels of land in the province of Isabela, on the island of Luzon, P. I., and each were granted a right to the several pieces of land, varying, to some extent, in dimensions only, the language of each grant being the same as that contained in the following documents:

"Joaquin Chinchilla y Diez de Oñate, general Intendent of the treasury department of these Islands:

"Whereas Doroteo Faustino has denounced the piece of public land situated at Mabantad, within the town of Cauayan, Province of Isabela de Luzon, the superficial area of which is 90 hectares, 97 areas and 80 centiareas, or 32 quiñoes 5 balitas and 5 loanes, bounded on the North by the River Rio Grande Cagayan, on the east by public lands denounced by Santiago Garcia, on the south by public lands denounced by Ponciano Hernandez, and on the west by the forest of the rancho Mabantad; and

"Whereas, by decree of this office of July 6 last, the applicant was awarded the ownership of the land referred to, upon payment of its value, the fees of 'media annata', and other proper fees required by the law in force, and having paid me the sum of $191.95 for the total value of the land, and the sum of $8.63-⅝ for the fees of 'media annata', and dispensation of the royal confirmation, I issue this title so that by virtue thereof, the said Doroteo Faustino
317 may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military Government of Isabela de Luzon, under pain of nullity if the con-

trary is done, so that it may be entered in that Government, and possession may be given in the usual legal form.

"Done in Manila, the 20th of October, in the year one thousand eight hundred and eighty two.

"JOAQUIN CHINCHILLA,
"Central Administrator of Government Monopolies.
"FRANCISCO CALVO MUÑOZ.

"Signature fees, $5.00

To which document was attached a seal which reads:
"General Intendence of the Public Treasury of the Philippines."

Continuing the document reads:

"Title deed to a piece of public land situated at Mabantad, within the town of Cauayan, in the province of Isabela de Luzon, issued in favor of Doroteo Faustino, by decree of the General Intendence of the Treasury of the 11th instant, in which it is directed that the present title deed to a piece of land in Isabela de Luzon be issued on common paper, the Department undertaking to pay its value when the whereabouts of the document and the seals which the petitioner delivered to the subdelegation of the Treasury
318 Department in the province referred to, are discovered, with the corresponding effects themselves so recorded, in compliance with the said decree.

"Dated Manila, October 20, 1882.

"CALVO."

A seal was attached to this document reading:
"Central Administration of Government Monopolies, Philippine Islands.

"Recorded in the Central Administration of Government Monopolies, Manila, the 26th of October, one thousand eight hundred and eighty-two.

"CALVO."

A seal was attached reading:

"Central Administration of Government Monopolies, Philippine Islands.

"No. 744. In Manila, the 5th of December, one thousand eight hundred and eighty-two, before me, Miguel Torres, licentiate of law, and notary public of this city, and the witnesses hereinafter named, personally appeared Doroteo Faustino, of age, a resident of the town of Malibay, this province, a farmer by occupation, and personally known to me, and after having stated that he has the necessary legal capacity for the execution of this public instrument of sale, which I believe to be true, nothing to the contrary being known by me, he deposed and said:

"(1) Property.—That he is the owner of the piece of public land situated at Mabantad, Cauyalan, Province of Isabela
319 de Luzon, the area of which is 90 hectareas 97 areas and 80 centiareas, or 32 quiñones 5 balitas and 5 loanes, bounded on the north by the Rio Grande Cagayan, on the east by public lands

denounced by Santiago Garcia, on the south by public lands denounced by Ponciano Hernandez, and on the west by the forest of the rancho Mabantad.

"(2) Title.—That the said land was purchased by the deponent from the royal treasury, for the sum of $191.95 (pesos) for the total value of the land, and $8.63-⅝ for the fees of "media annata", and the dispensation of the royal confirmation, which total sum of $200.58-⅝ (pesos) was paid by him as shown by the deed issued in his favor by his excellency the intendent Joaquin Chinchilla, on the 20th of October last, which was exhibited to me and to which I refer, as does the deponent; and

"(3) Sale.—That he has agreed upon the sale of the said described land to Antonio Pascual Casal, of this vicinity, for the sum of $201.00 (pesos) and now carries the agreement into effect, and declares that he sells and absolutely conveys the land in question, with all its appurtenances, rights, uses, and easements to Antonio Pascual Casal, for the sum of $201., the receipt of which he acknowledges hereby, in current coin, to his entire satisfaction; as to which receipt, the same being true, and not having been made in my presence, he waives the acceptation of the money not paid in cash, and the two years which the law prescribes for the exercise of such action. In consequence he grants and conveys to Sr. Casal,
320 the ownership, rights, and actions which he has or may have to the said land, authorizing him to take possession thereof, and disposing of it at his will, as of a thing lawfully acquired, to which end he now delivers him the title, deeds, undertaking to do the same with respect to the transcript of this present instrument as soon as the same is copied, thus affecting the symbolic delivery of the said land, which he declares to be free of all encumbrance, binding himself to warrant and defend the same at all times.

"Acceptance.—The purchaser, Antonio Pascual Casal, of age, a proprietor and a resident of this vicinity, personally known to me, to which I certify, and, I being present, said: That he accepts the sale made to him by this instrument, in the precise terms in which the same is expressed, and undertakes to perform faithfully all matters incumbent upon him by law by reason of this acceptance.

"Finally, both parties declare that no fraud or lesion of any kind has been present in this contract; that the 201 pesos which are the consideration of this sale are a just consideration, and that if the lands should be worth more, the excess, whether little or great, is made a matter of mutual donation, perfect and irrevocable, with an express waiver of the law with respect to contract in which there may be lesion in more or less than one-half of the just price, and that the four years fixed by the law for the exercise of the action
321 is likewise waived, it being the will of the parties that from this moment this contract shall be recorded as completed and consummated upon the guarantee of all their property, present and future.

"So declared and executed in the presence of the witnesses Ambrosio Aquino and Mariano Palacio, both residents of this town, of age, personally known to me; and all having been informed of

their right to read this document for themselves, of which all the parties hereto have availed themselves, after which all sign and ratify the foregoing, to which I certify.

"DOROTEO FAUSTINO.
"ANTONIO P. CASAL.
"AMBROSIO AQUINO.
"MARIANO PALACIO.

"In the presence of
"LICENTIATE MIGUEL TORRES.

"Copy of the original, which appears on pages 2576 to 2579 of my public protocol for the present year, to which I refer. At the request of the parties I issue this first copy for delivery to the purchaser. Signed and sealed by me in Manila, the date of its execution; to which I refer.

"[SEAL.] "LICENTIATE MIGUEL TORRES."

It will be noted that the foregoing quotation contains two deeds.

First. That of the Government to Doroteo Faustino, issued on the 20th day of October, 1882, and

Second. By Doroteo Faustino to Antonio Pascual Casal, dated the 5th of December, 1882.

322 On the same 5th day of December, 1882, and on other days of the same month each of the other fifty-nine persons also conveyed their respective parcels of land to Antonio Pascual Casal.

This action relates only to the possession of seven of said parcels of land, numbered respectively from one to seven, inclusive.

The foregoing documents as well as those covering parcels two to seven, inclusive, were recorded in Vol. I of Cauayan, eleventh archive, folio 118, estate No. 75, and provincial volume 2 of Angadanan, archive I, folio 7, property No. 182, both first inscriptions Ilagan, September 17, 1898.

Antonio Pascual Casal, on a later date, to wit, on the 1st day of August, 1882—entered into a contract to sell all of the said parcels of land to the plaintiff in this cause, but before the contract was finally executed, he died. By his will, Jose Clavet was appointed as his executor. On the 29th of August, 1884, Jose Clavet duly qualified as said executor.

On the 31st day of October, 1887, by proper deeds of conveyance, the executor of the estate of Antonio Pascual Casal, Jose Clavet, conveyed to the plaintiff the lands involved in this litigation, to wit, parcels one to seven inclusive.

On the 9th day of March, 1885, the plaintiff presented its title to the register of property of the province of Isabela, to be
323 registered by him. The registrar of property refused to register the title of the plaintiff, because the title of the plaintiff was defective on account of the want of personality of the corporation.

However, on a later date, to wit the 17th day of September, 1898, the title deeds of the plaintiff, and also certain documents relating to

its incorporation, were duly registered in the "Registry of Property of La Isabela."

On the 19th day of April, 1901, the title deeds and documents relating to the title of the plaintiff to the lands in question were also recorded in book 1, No. 92, of the Registry, in the Forestry Bureau of the Philippine Islands.

The evidence shows that the plaintiff went into possession of the lands in question in 1883, and has continued in possession with more or less molestation since that date. It is assumed, without deciding it, there being no evidence to the contrary, that the plaintiff went into possession of the land by virtue of the contract of sale dated August 1, 1882, between Antonio Pascual Casal and the plaintiff, a portion of the contract price having been then and there paid.

Prior to the sale by the executor of the estate of Antonio Pascual Casal to the plaintiff, a survey of the land had been made. The evidence shows that at the time the deed of conveyance was
324 delivered by the executor to the plaintiff, a map or plan of the lands was also delivered to the plaintiff.

The evidence further shows that the plaintiff exercised ownership over the lands, by establishing boundary lines. The plaintiff, in 1888, had the land surveyed by expert surveyors called Basa and Baldomero Guillen. In 1894 another survey was made by Enrique T. de Andrade and Manuel Rodriguez, on behalf of the plaintiff. In 1901 still another survey was made by Gregorio Soriano. In all of these different surveys of the land no opposition was met with on the part of the defendants, or of any other third persons.

The plaintiff exercised further acts of possession and ownership over the lands by cultivating parts of the same and by cutting timber on the same, and without opposition on the part of any of the defendants, or on the part of the Government.

The evidence further shows that some of the defendants acknowledged the right of ownership on the part of the plaintiff, as early as the year 1896, by entering into a contract for the cultivation of a part of the lands in question.

It is contended on the part of the defendants that the original deed from the Government to the original denouncers had never been complied with, and that therefore the title never passed out of the Government, the condition being a condition precedent.
325 The condition in the original grant is as follows:

"This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military Government of Isabela de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form."

It has been asserted that under the doctrine of the decisions of the Supreme Court of the United States this condition is a condition precedent, and therefore the title to the lands in question never passed from the Government, and that the plaintiff, therefore, has no title.

A question similar to the one presented here, which has arisen under various Spanish land grants in territory by the United States

Government from Spain, has been presented to the Supreme Court of the United States on many occasions.

Among the first cases presented to the Supreme Court of the United States involving substantially this same question was that of the United States *vs.* Arredondo, decided at the January term, 1832, and reported in Sixth Peters, 691. In this case Arredondo & Son petitioned the authorities of the Spanish Government, located at Havana, in the Island of Cuba, to grant to them an undivided parcel of land containing 289,645 acres, situated in the county of Alachua in the Eastern district of Florida, about 36 miles west of
326 the St. Johns River and about 52 moles west of the city of St. Augustine. Later the said tract of land was granted to the said petitioners by the Spanish Government with all the formalities and solemnities used by it in such cases, on the 22nd day of December, 1817. The grant contained the following statements and conditions:

"And with the precise condition, to which they obligate themselves, to establish thereon two hundred families; the said establishment to begin to be carried into effect in the term of three years, at farthest, *without which this grant will be null and void.* Let this expediente pass to the surveyor-general, above mentioned, in order that he may make the corresponding plat in conformity to his information, to avoid future doubts and litigations; which being done, let the title in form be executed, with the same plat annexed thereto, a copy of which will remain in the expediente, with the provision that the said three years allowed to commence the establishment of families, are to run and to be counted from this date; and that on the first families being prepared with a list of the individuals, and mention made of the places of which they are natives, of their occupations, in order that the orders and instructions which the government and the superintendency of the royal domain in East-Florida may see fit to give, be issued, in order that an account of the whole be given in proper time to His Majesty."

327 It will be noticed that this grant contained three principal conditions:

(1.) That the grantee was to establish upon said land two hundred families;

(2.) That the said establishment should begin to be carried into effect within the term of three years, at farthest; and

(3.) In case that these conditions were not complied with, that the grant should be null and void.

The lands claimed by the petitioner Arredondo were within the territory of Florida ceded to the United States by the Treaty with Spain dated the 22nd of February, 1819.

On the 11th of November, 1828, Arredondo & Son and others, their grantees, filed their petition in the Superior Court of the Eastern district of Florida, against the United States, setting up the grant from the Spanish Government, and prayed that their title be confirmed, under the provisions of the 6th section of an act of Congress passed May 23, 1828, entitled: "An act supplemental to the several acts providing for the settlement and confirmation of private land claims in Florida."

To this petition the Attorney-General of the United States for the District of Florida filed an answer at the May term, 1829, and, among other things, stated in the answer that if it (the grant) was so made by the Spanish Government to the said Arredondo & Son, it was made upon the precise obligation and express condition
328 of their binding themselves to establish there, to wit, on the said tract of land, 200 Spanish families, with all the requisites which were pointed out to them by the superintendency, etc., to wit, on their beginning their establishment on the said tract of land within three years at most from the date of said grant, without which the said grant was to be considered null and void; which condition the said Arredondo & Son accepted and engaged to perform; that the said Arredondo & Son did not commence their said establishment on the said tract of land within the said three years; and they had not established on the lands two hundred families, according to their engagement, and had wholly failed so to do; and further that the said condition and obligation had not been complied with and fulfilled, either by the said Arredondo & Son or by any other person or persons in their behalf, nor by the said petitioners, so far from it, that the said Arredondo & Son, after the time when the said grant was supposed to have been made as aforesaid, and without having in any manner complied with the condition thereof, removed their families from the province of East Florida to the Island of Cuba, then and still one of the dependencies of the Crown of Spain, and did then totally abandon the said tract of land, and that if the said grant was made as was alleged, and upon the condition mentioned, the performance of the said condition was a matter of special trust and confidence reposed by the said Spanish Government in
329 the said Arredondo & Son, which could not have been delegated by them to any other person or persons; and that the sale and conveyance of said tract of land, or of parts thereof, in manner and form as is in said bill alleged, without having first performed the said condition, was a violation of the special trust and confidence so reposed in them as aforesaid, and rendered the said grant (if any such was ever made) by the laws then in force in East Florida entirely null and void.

The answer of the United States Government further stated:

"That the United States claimed title to the said tract of land, by virtue of the 2nd article of the Treaty of amity, settlement, and limits, between the United States and His Catholic Majesty, which was made, concluded, and signed between their respective representatives at the city of Washington, on the 22nd day of February, in the year of our Lord 1819, and which was accepted, ratified and confirmed by the President of the United States, by and with the advice and consent of the Senate thereof, on the 22nd day of February, in the year of our Lord 1821, by which His Catholic Majesty ceded to the United States, in full property and sovereignty, all the territories which then belonged to him situated to the eastward of the Mississippi, known by the name of East Florida, in which East Florida the said tract of land was situated."

The supplemental answer of the United States Government contains the further allegation:

330 "That if any such grant of further time was given by the Spanish Government to Arredondo & Son to perform the conditions of the said supposed grant, the grant of further time was equivalent to a new grant for the said lands, and that it was made contrary to and in violation of the laws, ordinances, and royal regulations, and without any power or authority on the part of the said Spanish Government."

And further:

"That if the said extension of time was made that it was made after the 24th day of January, 1818, and was rendered wholly null and void by the provisions of the latter clauses of the eighth article of the treaty."

To the answer of the United States Government, the petitioner filed a general replication, and the case was regularly proceeded in to a hearing. On the 1st day of November, 1830, a decree was given in favor of the petitioners, from which decree the United States appealed to the Supreme Court.

The Court, in considering the condition upon which the grant was made to Arredondo & Son, through Justice Baldwin, said:

"We now consider the conditions on which the grants were made. According to the rules and the law by which we are directed to decide this case, there can be no doubt that they are subsequent, the grantee is in full property, in fee and interest vested on its execution, which could only be divested by the breach or nonper-

331 formance of the conditions, which were that the grantees should establish on the lands two hundred Spanish families."

After a very extended argument of the facts and the law governing such cases, the Supreme Court of the United States affirmed the judgment of the court below and gave to Arredondo & Son title to the lands.

The cause of the United States, as appellant, *vs.* John Percheman, appellee (7 Peters, 51), came before the Supreme Court of the United States in 1833 on appeal from the superior court for the eastern district of Florida.

On the 8th day of December,1815, the appellee petitioned his excellency the governor to grant to him (the petitioner) 2,000 acres of land in the place called Ockliwaha, situated on the margins of the St. Johns River in East Florida.

On the 12th day of December, 1815, Estrada, then Governor of East Florida, granted to the petitioner the 2,000 acres of land which he solicited.

On the 31st day of December, 1815, Percheman petitioned the governor to order a survey of the said land. On the same day the governor granted the petition. In pursuance of said petition Don Robert McHardy was appointed to survey the lands.

On the 20th day of August, 1819, McHardy filed his report with the governor, stating that he had surveyed the said lands — had prepared a plat of the same.

332 On the 17th of September, 1830, John Percheman filed in the clerk's office of the superior court for the eastern district of Florida, a petition, setting forth his claim to a tract of land con-

taining 2,000 acres within the district of East Florida, situated at a place called Ockliwaha, along the margin of the river St. John.

The petitioner stated that he derived his title to the said tract of land under a grant made to him on the 12th day of December, 1815, by Governor Estrada, then Spanish Governor of East Florida, and while East Florida belonged to Spain.

On the 2nd day of October, 1830, the attorney of the United States for the district of East Florida filed an answer to the petition of Percheman, in which it was stated that on the 28th day of November, 1823, Percheman sold, transferred and conveyed to one Francis P. Sanchez, all his rights, title, and interest in the tract of land claimed by him.

The answer further alleges that if Governor Estrada did make the grant or concession set forth by the petitioner at the time "and in the manner alleged in the said petition or bill — complaint, he made it contrary to the laws, ordinances and royal regulations of the Government of Spain, which were then in force in East Florida, on the subject of granting lands, and without any power or authority to do so, and that the said grant was and is therefore null and void."

333 This being the issue, the court proceeded to trial, and adjudged that the grant was valid * * * and was confirmed, from which judgment the United States appealed to the Supreme Court of the United States.

Chief Justice Marshall delivered the opinion of the court, and the court was unanimous in confirming the judgment of the lower court.

The cause of the United States, appellant, *vs.* Clark, appellee, (8 Peters, 434), came before the Supreme Court of the United States in 1834.

On the 4th day of April, 1829, Clark filed a petition in the superior court for the eastern district of Florida, praying that court to decree a confirmation of his title to 16,000 acres of land granted to him on the 6th day of April, 1816, by Don Jose Coppinger, then acting governor of the province of East Florida, to which petition was annexed the following documents:

(1) His petition to Governor Coppinger, to be ganted 16,000 acres of land on the west side of St. Johns River, near and at Black Creek, and at a place called White Spring, and a copy of the grant by his excellency Governor Coppinger, dated on the same day.

(2) A supplmental petition to Governor Coppinger, dated the 25th day of January, 1819, praying to be allowed to survey 8,000 acres of said grant on other vacant lands, and a copy of the grant made by Governor Coppinger to said supplemental petition, dated the same day.

334 (3) Three reports of a survey, dated respectively the 24th of February, 1819, 10th of March, 1819, and the 12th of March, 1819, showing the survey of three tracts of land for Mr. Clark.

An examination of these differing surveys shows that but 8,000 acres of land, petitioned for by the plaintiff, was surveyed in the

place designated in the original petition. To which petition the United States filed an answer, in which it was denied that "by and under the usages, customs, laws, and ordinances of the King *and* Spain, the petitioner is entitled to and vested with a full and complete title in fee simple, or any other title whatever to the said land, and that the supposed grant to the said petitioner is entirely null and void."

The answer further denies that governor Coppinger had any power or authority whatever to make such a grant; and that if such a grant was ever made to the petitioner, it was made in violation of the laws, ordinances, and royal regulations of the Spanish Government.

The United States Government further contended that if Governor Coppinger possessed the power of making said grant on the 6th day of April, 1816, the eighth article of the Treaty having barred all grants made subsequent to the 24th day of January, 1819, he had no power on the 25th of January, 1819, to substitute other lands at a remote distance for those which were granted to
335 the petitioner on the 6th day of April, 1816. And further, that the change of location on the 25th day of January, 1819, was equivalent to the making a new grant, and the act is void under the provisions of the treaty. The lands claimed by the petitioner, and embraced in the second and third surveys, were vacant lands on the 24th of January, 1818, and were, by the second article of the treaty of 1819, transferred to the United States. The superior court of the eastern district of Florida, by decree, affirmed the title of Clark, and the United States appealed to the Supreme Court of the United States.

Chief Justice Marshall delivered the opinion of the court, and in a most instructive opinion, affirmed the title of Clark to the lands in the original grant, and denied his title to the lands surveyed on the 10th and 12th of March, 1819, respectively.

The case of the United States, as appellants, *vs.* Chas. F. Sibbald, appellee, (10th Peters, 313), came before the Supreme Court of the United States in 1836. It was an appeal from the eastern district of Florida. This was a claim to land in East Florida presented to the superior court of East Florida, by the appellee, founded on the petition for 16,000 acres of land, made by Don Jose Coppinger, governor of the province of East Florida, to Charles F. Sibbald, the claimant, on the 2nd day of August, 1816.

On the 16th day of July, 1816, Sibbald presented his petition to Governor Coppinger, setting forth that he was desirous of erecting machinery for sawing timber on Little Trout Creek, on the
336 North side of the river St. John, and that of Nassau. He further petitioned for permission for the purpose of his petition, with corresponding surety, of the grant of land of 5 miles square, or its equivalent, in the event that this situation will not permit the said form, which land will insure the continuous supply of timber.

On the 2nd day of August, 1816, the governor granted "the permission solicited, without injury to third persons, under the express condition, that until the establishment of the mill, the grant of the

land which will be a square of 5 miles, in order that he may use the timber, shall be of no effect, etc."

Pursuant to this grant a survey was made on the 2nd day of May, 1819, of 10,000 acres, at the place named in the petition. In February, 1820, 4,000 acres more were surveyed in another place called Turnbull Swamp, at the distance of 30 miles from the first survey; and afterwards a residue of 2,000 acres was surveyed at a place called Bow Legs Hammock, at the distance of 20 or 30 miles.

In answer to the petition of Sibbald in the court below, the attorney for the United States denied the power of governor Coppinger to make the grant, and insisted that the grantee, Sibbald, had not complied with the condition of the concession. There was some evidence to show that Sibbald had expended in the year 1819, several thousand dollars in the erection of a water sawmill, which was nearly completed, but that owing to various difficulties and the embarrassment of said province the mill did not go into operation. This was three years after the date of the grant.

337

By the decree of the superior court the claim of the petitioner was confirmed as to the 10,000 acres survey on the Trout Creek, and rejected as to the two remaining surveys of 4,000 and 2,000 acres, respectively, from which decree both parties appealed.

In the Supreme Court of the United States the attorney for the United States contended that the condition in the grant was a condition precedent, and which was not begun to be performed until the grant became positive by the order of the governor made the 29th of October, 1819, declaring all grants made in consideration of mechanical improvements to be made to be void, if the condition were not performed in six months.

The decision of the court was written by Justice Baldwin and concurred in by all the Judges. In the opinion Justice Baldwin said:

"The evidence in this and the other cases which have been decided, is very full and clear, that no grant has ever been annulled or revoked by the Spanish authorities for any cause; and that there is no instance of a governor having granted land which had been before granted on condition; and it may well be doubted, whether it would have been reannexed to the royal domain had the province remained under the dominion of the King of Spain; nor is there any provision of any law of Congress which specially requires the court to inquire into the performance of conditions on which grants were made."

338

The court continues:

"We are of opinion that the title of petitioner to the whole quantity of land specified in the grant is valid, by the law of nations, of Spain, the United States, and the stipulations of the treaty between Spain and the United States for the cession of the Floridas to the latter; and ought to be confirmed to him according to the several surveys made, as returned with the record. We do therefore order, judge, and decree that the decree of the court below, confirming the title of the petitioner to the 10,000 acres on Trout Creek, be, and the same is hereby confirmed, and this court doth further order, ad-

judge, and decree that the decree of the court below, rejecting the claim of the petitio-ers to the land embraced in the surveys of 4,000 acres and of 2,000 acres, as returned with the record, be, and the same is hereby reversed and annulled."

See also the causes of the United States *vs.* Levi, 8 Peters 479; United States *vs.* Bernardo Segui, 10 Peters, 306; United States *vs.* Benjamin Chaires, 10 Peters, 308 and United States *vs.* Charles Seton, 10 Peters, 309, decided at the same term of court with that of the United States *vs.* Sibbald.

The case of the United States *vs.* Boisdore *et al.* (11 How., 63), decided in 1850, is sometimes cited as contrary authority for the proposition contended for here. In that case Boisdore had obtained authority, or a concession, to a certain tract of land, on which
339 he relied, in the year 1783 from the Spanish Government, as it was then constituted in the Louisiana territory. He had never caused a survey to be made during the existence of the Spanish Government, although twenty years had elapsed before its cession to the United States. Nor was any step taken by him to obtain title from the United States, nor any claim legally brought forward for seventeen years after the territory had been ceded to the United States. And nothing like any serious attempt had been made by him to fulfill the conditions upon which he had obtained the concession. This case was decided by a divided court. Justice Wayne, dissenting from the opinion of the majority of the court, said:

"In my opinion the opinion of the court is a departure from all heretofore adjudged by the court in respect to the right of property secured by our treaties with France and Spain to the inhabitants of Louisiana and Florida."

The case of Glenn *et al. vs.* the United States (13 How. 250), decided in 1851, might also be cited by those who maintain a contrary doctrine. In that case the grant was obtained in 1796, and no possession was taken, and no survey had, nor had any of the conditions into which he had entered, been complied with while the Spanish Government lasted. Nor, indeed, was any claim made to it for several years after the cession to the United States; nor until the country in which it was situated was filling up with an industrious population and the land becoming of great value.
340 So also might those who maintain a contrary doctrine cite the case of Vilemont *vs.* the United States (13 How., 266), decided in 1851. In this case the grant was made by the governor-general of Louisiana in 1795, upon the condition that a road and clearing should be made within one year, and an establishment made upon the land within three years; neither of those conditions was complied with, nor was possession taken under the grant until after the cession of the country to the United States. He did nothing during the continuance of the Spanish Government, although it lasted eight years afterwards; and the excuse of Indian hostility could hardly avail him, because no difficulty of that kind is suggested in his petition to have his title confirmed; and from the character of the improvements he promised to make, it would seem that one of the objects of this large grant of several thousand acres of

land was to form an establishment which would be useful in repelling Indian hostilities from the neighboring Spanish settlements.

The court denied his petition to have his title confirmed for the reason that he made no attempt to comply with the conditions of his grant. He had not even taken possession of the land.

The next case of importance which came before the Supreme Court of the United States, that of Fremont *vs.* the United States (17 How., 442-576), was decided in 1854. Chief Justice Taney delivered the opinion of the Court. Chief Justice Taney was especially well qualified to discuss the rights, titles, and interests
341 involved in the Spanish land grants he having been attorney-general of the United States and represented the United States Government in much of the litigation which had gone before, involving the interpretation and application of these grants. This case was originally tried in the district court of the United States for the northern district of California.

On February 23, 1844, Juan B. Alvarado made his petition in writing to the then Governor of California, Don Manuel Michel-torrena, for a grant of ten square leagues of land described in said petition.

On the 29th of February, 1844, the governor, Don Manuel Melchitorrena granted the petition of Alvarado, in the following language and with the following condition, among others:

"I declare Don Juan B. Alvarado the owner in fee of the tract of land known by the name of "Mariposas" within the boundaries of the Snow Mountains, the rivers called Chonchillas, Merced, and the San Joaquin * * * I have granted to him the aforesaid tract of land, declaring the same by these presents, his property in fee, subject to the approbation of the most excellent the department assembly, and the following conditions:

"(1) He shall not sell, alienate, nor mortgage the same, nor subject it to taxes, entail, or any other incumbrance.

"(3) He shall solicit from the proper magistrate, judicial possession of the same, by virtue of this patent, by which the boundaries shall be marked out, on the limits of which he (the grantee) shall place proper landmarks.

"(4) The tract of land granted is ten square leagues, as aforementioned. The magistrate who may give him possession
342 shall cause the same to be surveyed, according to the ordinances the surplus remaining to the nation for the proper purposes.

"(5) Should he violate these conditions, he will lose his right to the land, and it will be subject to be denounced by another."

In the month of February, 1847, while California was occupied by the American forces, Alvarado conveyed the lands contained in the grant to Colonel Fremont, an American citizen.

On the 27th day of December, 1852, the board of commissioners provided for, and, acting under an act of Congress of 1851, signed their final decree confirming the grant.

On the 7th day of December, 1853, the district court for the northern district of California decreed that the decision of the com-

missioners be reversed and that the claim be held invalid and rejected, whereupon the claimant appealed to the Supreme Court of the United States.

Upon reading conditions three and five above noted, it will be seen that they, read together, are much like the conditions imposed in the case at bar.

Chief Justice Taney, in considering these conditions, said:

"There can be no question as to the power of the governor of California to make the grant. And it appears to have been made according to the regular forms and usages of the American law. It has conditions attached to it; but these are conditions subsequent. And the first point to be decided is,

343 Whether the grant vested in Alvarado — any present and immediate interest. And if it did, then, second, whether anything done or omitted to be done by him, during the existence of the American Government in California forfeited the interest he had acquired and revested in the Government. For if, at the time the sovereignty of the country passed to the United States, any interest, legal or equitable, remained vested in Alvarado or his assigns, the United States are bound in good faith to uphold and protect it * * *

"It is argued that the description is so vague and uncertain that nothing passed by the grant; and that he had no vested interest until the land was surveyed, and the part intended to be granted severed by lines or known boundaries from the public domain. But this objection can not be maintained * * * as between him (Alvarado) and the Government, who had a vested interest in the quantity of land mentioned in the grant. The right to so much land, to be afterwards laid off by official authority, in the territory described, passed from the Government to him by the execution of the instrument granting it * * *

"The principles decided in this case appear to the court to be conclusive as to the legal effect of the grant to Alvarado. It recognizes as a general principle of justice and municipal law, that such a grant for a certain quantity of land, by the Government, to be afterwards surveyed and laid off, within a certain territory, vests in the grantee a present and immediate interest."

344 Chief Justice Taney, discussing the effects of the conditions contained in the original grant said:

"Regarding the grant to Alvarado, therefore, as having given him a vested interest in the quantity of land therein specified, we proceed to inquire whether there was any breach of the conditions annexed to it, during the continuance of the Mexican authority, which forfeited his right and revested the title in the Government.

"The main objection on this ground is the omission to take possession, to have the land surveyed and to build a house on it within the time limited in the conditions. It is a sufficient answer to this objection to say, that negligence in respect to these conditions and others annexed to the grant, does not, of itself, always forfeit his right * * *

"The omission or inability of the public authorities to perform

their duty, can not, upon any sound principle of law or equity, forfeit the property of the individual to the State. It undoubtedly disabled him from obtaining what is called a definitive title, showing that all the conditions had been performed; but it could not divest him of the right of property he had already acquired by the original grant, and revest it in the State * * *

"The only question before the court is the validity of the title * * *

"Upon the whole it is the opinion of the court that the claim of the petitioner is valid and ought to be confirmed. The
345 decree of the district court must, therefore, be reversed and the case remanded, with directions to the district court to enter a decree conformably to this opinion."

The question in the case of Pacheco *et al. vs.* the United States (68 U. S., 282) (17 Law Edition, p. 594), decided in 1863, was not a question whether or not the conditions contained in the original grant had been performed, but whether or not the original grant had not been fraudulently altered, increasing the amount of land included in the original grant. Upon that question the court held that there had been no alteration, and confirmed the title of the original grantee.

In the case of Bouldin and others *vs.* Phelps (30 Fed. Rep., 547), decided in 1887, the question was not whether the conditions contained in the original grant by the Spanish Government had been performed, but whether any grant at all had been made. Upon that question the Court held that the Spanish Government had never made a valid grant of the lands in question, and therefore those who succeeded to the interest of the original alleged grantee had no interest. (See also Carpenter *vs.* Montgomery, 13 Wallace, 480).

In the case of More *vs.* Steinbach (127, U. S., 70), decided in 1887, the question presented for determination related to the effect of proceedings taken under the act of March 3, 1851, of the Congress of the United States, to ascertain and settle private land claims in California, upon the claims of parties holding concessions of land
in that State under the Spanish or the Mexican Govern-
346 ments. By this act a board of commissioners was created, to which all persons claiming land by virtue of any right or title derived from the Mexican or Spanish Governments coul*s* present their claims and have them examined and their validity determined; and the claimants could appear by counsel and produce documentary evidence and witnesses in support of their claims. The act required all persons thus claiming lands in California to present their claims to the board within two years from its date, and declared in substance that if, upon examination, they were found by the board, and by the courts of the United States, to which an appeal was allowed, to be valid, the claims, should be affirmed and surveyed and patents issued therefor to the claimants. The act also declared that all lands, the claims to which were not presented to the board within that period, should be considered as part of the public domain of the United States.

Under these provisions the Mexican grantee applied to the com-

mission to have his title confirmed, which the commission did. However, the title affirmed by the commission, for some reason or other, did not cover all of the lands included within the original grant by the Mexican Government. Subsequently patents were issued to other parties to the lands included in the original grant, but outside of the land to which he had his title affirmed by the commission. Later an action was brought to eject these latter parties from the land. The court refused to eject them.

347 The following cases also contain discussions by the courts of the United States of the rights of grantees under Spanish land grants: Malarin *vs.* United States, 1 Wallace, 290; United States *vs.* Workman, 1 Wallace, 761; Graham *vs.* United States, 4 Wallace, 261; Beard *vs.* Federy, 3 Wallace, 490; Hornsby *vs.* United States, 10 Wallace, 238; United States *vs.* Cambustin, 20 Howard, 61; United States *vs.* Halleck, 1 Wallace, 455; United States *vs.* Billings, 2 Wallace, 448; Higuera *vs.* United States, 5 Wallace, 827; St. Louis Smelting Company *vs.* Kemp, 104 U. S., 641; Steel *vs.* St. Louis Smelting Company, 106 U. S., 454; United States *vs.* Sepulveda, 1 Wallace, 104.

It is maintained in the case at bar that the lands surveyed and occupy by the plaintiffs do not conform to the original grant on the part of the Spanish Government in the Philippine Islands. This question is not a judicial question. That question must be settled by the executive branch of the Government and not by the court. (U. S. *vs.* Flint, 4 Sawyer, 61; Beard *vs.* Federy, 3, Wallace, 492; U. S. *vs.* Sepulveda, 1 Wallace, 108.)

In the present case the grant was made by the proper authorities of the Spanish Government in the Philippine Islands. The Government received full compensation for the land, and delivered to the plaintiff a grant as evidence of their title, under which grant the plaintiffs, through conveyances from the original grantees, went into possession of the land, and had the land surveyed and

348 properly segregated from the public domain. If it be true that the plaintiffs were occupying more land than was originally granted by the Government, or are not occupying the same lands so granted, that is a question for the executive branch of the government.

The condition in the original grant of the government is a condition subsequent, and the grantee, by a failure to comply with the said condition, does not lose his right to the land *ipso facto*. The lands do not revert *per se* to the Government. The Government must take the necessary steps to forfeit the grant. (Bybee *vs.* Oregon Railway Company, 139 U. S. 663.)

No one but the grantor can raise the question of the performance of a condition subsequent. (U. S. *vs.* So. Pac. Ry. Co., 146 U. S. 570.)

If the grantor makes no effort to enforce the forfeiture of the property by reason of the nonperformance of the condition, the property remains wholly in the grantee.

No case has been found, and it is believed that there are none, where the Spanish Government or the Mexican Government has

forfeited a title under a grant, where the Government has received a consideration, and where the party has actually gone into possession, whether the party has gone into possession in the regular way provided for by the condition named in the deed, or whether he has taken possession on his own account.

349 It has been contended here that no authority was shown giving the Spanish officials in these Islands power to make the original grant. In the absence of proof to the contrary this fact will be presumed.

We believe that the condition of the grant in this case is a condition subsequent. An estate on a condition expressed in the grant itself is where an estate is granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, on the performance or breach of such qualification or condition. These conditions are either precedent or subsequent. A condition precedent is a condition which must happen or be performed before the estate can vest or be enlarged. A condition subsequent is a condition by the failure or nonperformance of which an estate already vested may be defeated. For example: If an estate for life be granted to A, upon condition that he marry B, the marriage is a precedent condition, and until that condition happens no estate is vested in A; but, if a man grants an estate in fee simple, reserving to himself a certain rent or annuity, if such rent be not at the times limited, it shall be lawful for him and his heirs to reenter and avoid the estate. It is an estate upon condition subsequent, which is defeasible if the condition is not strictly performed. (Schulenberg *vs.* Harriman, 21 Wall., 44; Holden *vs.* Joy, 17 Wall., 211; Ruch *vs.* Rock Islands, 97 U. S., 693; Van Wyle *vs.* Knevals,

350 106 U. S., 360; Northern Pac. Ry. Co. *vs.* Majors, 5 Montana, 111; Railroad Land Co. *vs.* Courtwright, 21 Wall., 316; U. S. *vs.* C. P. Ry. Co., 118 U. S., 238; St. Louis Ry. Co. *vs.* McGee, 115 U. S., 473; Pac. Ry. Co. *vs.* U. S., 124, U. S. 129.)

There are no technical words to distinguish conditions precedent from conditions subsequent; whether they be one or the other is a matter of construction and depends upon the intention of the party creating the estate.

Justice Marshall, in the cause of Finlay *vs.* King (3 Peters 345), in discussing the distinction between a condition precedent and a condition subsequent, said:

"There are no technical, appropriate words which always determine whether a condition be a condition precedent or subsequent. The same words have been determined differently, and the question is always one of intention. If the language of the particular clause, or of the whole document, shows that the act on which the estate depends must be performed before the estate can vest, the condition is, of course, precedent; and, unless it be performed, the grantee or devisee can take nothing. If, on the contrary, the act does not necessarily precede the vesting of the estate, but may accompany or follow it, and this is to be collected from the whole document, the condition is subsequent."

By referring to the grant in this case by the Government, we find the following language, after the description of the property granted:

351 "And whereas, by decree of this office of July 6th last (1882) the applicant was awarded the ownership of the land referred to upon payment of its value."

This language clearly indicates that the government had parted with its title to the land, and the only thing remaining to be done on the part of the government was to point out the lands to the grantee, and have them properly segregated from the public domain. If the grantee knew the lands and was able to go into the possession of them without the aid of governmental agencies, and there has been no mistake, then certainly the government has no grounds upon which to base an avoidance of the title; and if the government, then, can not avoid the title, certainly private persons may not.

Many cases have been decided by the Supreme Court of the United States involving the same question, arising in cases of grants made in Florida, Louisiana and California. There is, however, no case which I have seen or which has been called to my attention where the grant has been rejected for the nonperformance of the conditions, except when a time has been limited in the grant for the performance of the condition and it had never been performed. (U. S. *vs.* Mills' Heirs, 12 Peters, 215; U. S. *vs.* Kingley, 12 Peters; U. S. *vs.* Drummond, 13 Peters; U. S. *vs.* Burgevin, 13 Peters; U. S. *vs.* Wiggins, 14 Peters.)

The Supreme Court of the United States has confirmed these grants, even in the face of the fact that the grant contained no description of the land, no boundaries, and even no desig-

352 nated point for the commencement of the survey.

The case of Wherry *vs.* United States (10 Peters) was a grant for 1,600 arpents of land near the rivers Bardennes and Mississipi, in the vacant lands of the King.

The case of John Smith *vs.* The United States was a case of 10,000 arpents, with permission to locate in separate places, anywhere that was suitable to the grantee.

The case of Buyck *vs.* The United States (15 Peters, 215) was for lands at Mosquito, south and north of said place. The case of O'Hara *vs.* The United States (15 Peters, 275) was a grant for land in the district of Nassau.

In the case of The United States *vs.* Belespine (15 Peters, 319) was a grant for land at New River.

In the case of the United States *vs.* Miranda (16 Peters) was a grant for "eight leagues square on the waters of Hillsborough and Tampa Bays."

The grants were equally uncertain and indefinite in the cases of the United States *vs.* Boisdore (11 Peters, 63); United States *vs.* Lawton (5 How., 10), and Lecompte *vs.* United States (11 How.)

In all the cases and in many others no land is pointed out by the grant as subject to individual ownership, and there was, in fact, no separation of any portion from the public lands.

In the Arredondo case it was held that want of survey did not interfere with the title of the grantee.

353 If the grantee neglected any of the directions or conditions imposed by the terms of the grant, there is no doubt that the land might have been denounced and granted to another and probably by some other proceedings forfeited to the Government. But as long as there was no denouncement by another, and no forfeiture by the Government as long as the Government did not complaint of the inaction or neglect, or limit the performance of the condition within any given time, so long did his right to the whole grant remain perfect and complete against the whole world. No third person had the right to come in and determine that his possession contained more than the quantity granted nor that he had not complied with the conditions imposed in his grant.

As confirmatory of the doctrine laid down by the court in this case we cite the following decisions: Vanderslice *vs.* Julian Hanks, 3 Cal. 27 (1852); Ferris *vs.* Coover, 10 Cal., 582 (1858) (this is a very instructive case); Estrada *vs.* Murphy, 19 Cal. 249 (1861); Rico *vs.* Spence, 21 Cal., 504 (1863); Banks *vs.* Moreno, 39 Cal., 233 (1870); Steinbach *vs.* More, 30 Cal., 498 (1866); (this same case is found in 127 U. S.); Hartley *vs.* Brown, 46 Cal., 201 (1873); see same case 51 Cal., 465 (1876); Hancock *vs.* McKinney, 7 Tex., 384 (1851); and cases cited; Rivers *vs.* Foote 11 Tex., 662 (1854); Johnson *vs.* Smith, 21 Tex., 722 (1858).

This is an action of ejectment. The doctrine is well established that in an action of ejectment, the plaintiff seeking to recover possession of land occupied by another must recover upon the

354 strength of his own title rather than upon the weakness of the title of the defendant, and the burden of showing his title rests upon him who asserts it. Ordinarily, the plaintiff may prove his title by showing grants direct from the Government, or by a connected chain of title back to the Government, or to some grantor in possession.

In the present case the plaintiff proved a direct grant from the Commonwealth through his grantors. He thereby acquired a *prima facie* title to the land which can not be defeated by a defendant entering upon the land without title or claim, or color of title. (Holloran *vs.* Meisel, 87 Va. 398.)

Neither can the defendant defeat the title of the plaintiff who holds his title through a chain of title from the Government by showing a prescriptive title. Inhabitants of the Philippine Islands can not obtain a prescriptive title against the Government, and therefore can not impose such a title against those holding grants from the Government providing the grantees from the Government have maintained possession or quasi possession of the land. (Valentor *et al. vs.* Murciano, decided by the Supreme Court in March 1904.)

From the evidence in this case we are justified in the following conclusions:

(1) That the plaintiff holds a grant, through other grantees, directly from the Government.

(2) That the condition found in the original grant from the Government is a condition subsequent.

355 (3) That grants to land by the Government containing conditions subsequent can only be forfeited by the Government in an action brought for that purpose.

(4) That the Government in this case received a consideration for the land.

(5) That the plaintiff and his grantors (the grantees from the Government) went into possession of the land contained in the original grant and have maintained actual or quasi possession of the land.

(6) That the defendants have no title or color of title, either by prescription or otherwise, against the plaintiff.

(7) That the plaintiff has shown sufficient title to maintain an action of ejectment against the defendants.

Therefore the judgment of the court below should be affirmed.

McDONOUGH, *J.*, dissenting:

The plaintiff claimed to be the owner of the lands in question, which it purchased in 1883; that the defendants were illegally in possession thereof; and prays that the defendants be evicted from said lands, that plaintiff may be placed in possession thereof and that damages be adjudged to be paid to plaintiff.

The answer controverts the boundaries, as set forth in the complaint, and denies the ownership of the plaintiff in and to the land in controversy.

356 The plaintiff claims title to this land in dispute, being included in grants numbers one to seven, inclusive, through mesne conveyances from those who purchased the same, as public lands from the royal treasury in the year 1882.

Each of these deeds from the Government contains the following provision:

"I issue this title, so that by virtue thereof the (grantee) may be declared the lawful owner of the said land. This title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon, *under pain of nullity* if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form."

No survey of the lands was made by the government; the grantees were not placed in possession in the usual legal form; and the grants were not presented to the politico-military government of Isabela for entry.

At the trial the defendants made objection to the receiving of these grants in evidence on the ground that they were null for the reason that they were never presented to the politico-military government of Isabela de Luzon; that they were not entered in that government; and that possession was not given to the grantees in the usual legal form.

Other questions are in dispute, particularly the question
357 of boundaries, which need not now be considered, inasmuch as if this point of the defendants, that the grants are null, be well-taken, that disposes of the case.

It is of course primary doctrine that in a possessory action of this nature, the plaintiff must rely on the strength of his own title, not on the weakness of that of the defendants, and so he must show here that he has a valid title as against the defendants, and to show that fact it was necessary to prove that the government grants, made to the grantors of the plaintiff, were valid. And the validity of these grants from the government, for the purpose of this action, depends upon whether the conditions requiring them, under pain of nullity, to be presented to the government of Isabela, to be entered therein and legal possession given in the usual legal form, are conditions precedent, or are conditions subsequent. If they be conditions precedent, the grantees from the government did not acquire a valid title, and could not until the conditions were complied with. And, inasmuch as in each grant it is provided that it shall be null if the requirements are not complied with, I am of opinion that the grantees did not acquire a valid title.

It can not be reasonably said that these requirements were not of importance to the government as well as to the grantee.

In order that the government of Isabela might know what land was granted in that province, it was necessary to have a record of it entered therein, and in order to prevent disputes and litiga-
358 tions regarding boundaries, such as has happened in this case, it was the wise practice to have the grantee placed in possession in a legal form.

The laws relating to and authorizing the sale of these public lands are not contained in the briefs, nor have they been presented to this court. On account of their absence I may assume that the practice here was similar to that under which grants were made in other Spanish colonies, and which grants contained similar conditions.

The Supreme Court of the United States has had occasion to pass upon the validity of many such grants made in California and other territory when under the jurisdiction of Mexico.

The importance of and proceedings relative to the delivery of possession in the "usual legal form" are described by Justice Field in the case of Pacheco *et al. vs.* The United States (68 U. S., 282) as follows:

"When the grant to Pacheco was issued there still remained another proceeding to be taken for the investiture of the title. Under the civil as at the common law, a fromal tradition or livery of seisin of the property was necessary.

"As preliminary to this proceeding the boundaries of the quantity granted had to be established when there was any uncertainty in the description of the premises. Measurements and segregation in such cases, therefore, *preceded* the final delivery of possession.

"By the Mexican law various regulations were prescribed for the guidance, in these matters of the Magistrates of the vicinage.

359 "The conditions annexed to the grant in the case at bar required the grantee to solicit juridical possession from the proper judge.

"In compliance with the requirement, within four months after the issuance of the grant, he presented the instrument to the judge of the district, and requested him to designate a day for delivering the possession. The judge designated a day, and directed that the adjoining proprietors be cited, and that measurers and counters be appointed.

"On the day designated the proprietors appeared, and two measurers and two counters were appointed and sworn for the faithful discharge of their duties.

"A line provided for the measurement was produced, and its precise length ascertained. The measurers then proceeded to measure off the land, the judge and the proprietors accompanying them.

"The measurement being effected, the parties went to the center of the land, and there the judge directed the grantee to enter into the possession, which he did, and gave evidence of the fact 'by pulling up grass and making demonstrations as owner of the land.'

"Of the various steps thus taken * * * a complete record was kept by the judge in the 'book of possessions' * * *.

"The ownership, extent, and general location of the land were matters thus brought within the knowledge of the neighborhood, and were no doubt afterwards the subjects of frequent reference
360 among the adjoining proprietors."

It has been held in several reported cases that after execution of grants in terms similar to those in this case, that the entry of the grant and the delivery of formal possession of the land granted was essential for the investiture of title.

In the case of Bouldin *vs.* Phelps (30 Fed. Rep., 547-558), the court said:

"There was no record made of the grant as required by law; the public record thereof, and not the document delivered to the party, was the effective grant. There was no juridical possession. The title, therefore, did not become definitely vested. A grant can not perfect or complete the title where anything remains to be done to perfect it."

This question was considered in the case of More *vs.* Steinbach (127 U. S. 70), and it was there held that the grant vested no title until the grantee was placed in possession according to law. That was a suit in equity to determine the adverse claims to certain lands in California.

The plaintiffs claimed to be the owners in fee under a patent from the United States. The defendants claimed an estate in a part of the property, adverse to plaintiffs under a Mexican grant.

In the decision, it was said by the Court, in discussing the defendant's grant:

"Upon the cession of the country there remained a further proceeding to be had with respect to the grant before any inde-
361 feasible title would vest in the grantee. A formal transfer of the property to the grantee by officers of the government was necessary.

"The proceeding was termed a judicial delivery of possession. Until it was had the grant was an imperfect one.

"As preliminary to, or as part of, the official delivery, the boundaries of the land were to be established after summoning the neighboring proprietors as witnesses to the proceedings."

No such official delivery of possession was had under the former government to the grantee Jimeno, though the grant to him contained these conditions:

(1) He shall petition the proper judge to put — in judicial possession, the boundaries to be marked out, and on the limits shall be placed land marks.

(2) The judge shall have it measured.

And consequently the court held:

"That the grant under which they claimed to have acquired a perfect title conferred none. The grantees were not invested with such title and could not be without an official delivery of possession under the Mexican Govrnment: and such delivery was not had and could not be had after the cession of the country except by the American authorities acting under a law of Congress."

This case was cited with approval in the case of Ainsa *vs.* United States (161 U. S., 208).

It has been suggested that the Supreme Court in the case of Fremont *vs.* The United States (58 U. S., 442) held that conditions of the nature discussed here were conditions subsequent and that, therefore, title vested in the grantees. The answer to this is that
362 if that case be in conflict with the More case, *supra*, it by implication repealed by this later decision. But an examination of the Fremont case shows that it turned on other questions involving the construction of an act of Congress and the waiver of certain conditions by the Mexican authorities.

It appears in that case that a Mexican grant was made of a tract of ten square legues of land known as "Mariposas" to Col. Juan B. Alvarado for patriotic services. Grant made in 1844, and land situate in California.

The grant recited that "the necessary requirements according to the laws and regulations having been previously complied with," the grant is made. Alvarado transferred his interest to Fremont.

The grant was made on the conditions:

First. That the grantee was not to sell, alienate, nor mortgage the same.

Second. That he was to enclose it and to build a house on it within one year.

Third. That he was to solicit from proper magistrate judicial possession of the same by virtue of this patent by which the boundaries shall be marked out.

Fourth. That the magistrate who may give possession shall cause same to be surveyed and

Fifth. That should the conditions be violated he was to lose his right to the land and it was to be subject to be denounced (petitioned for) by another.

The board of commissioners, acting under the act of Con-
363 gress of the year 1851, confirmed the claim as described in the grant and map filed in the office of the surveyor-general.

The conclusion of the commissioners was confirmed.

In reaching this result the court laid stress on the fact that this grant was confirmed pursuant to the act of Congress of 1851, which was intended to place the titles to land in California upon a stable foundation, and embraced not only inchoate or equitable titles, but legal titles also, and in this respect differed from the Mexican act of 1824, under which the claims in Louisiana and Florida were decided.

These grants it was said were almost always made upon condition of settlement, or some other improvement by which the interest of the colony, it was supposed, would be promoted.

"But," said the court, "until the survey was made, *no interest, legal or equitable passed in the land.* The original concession granted a naked authority or permission and nothing more. * * * The examination of the surveyor, the actual survey, and the return of the plot were *conditions precedent*, and he had no equity against the government and no just claim to a grant until they were performed."

The court, however, held that in this Alvarado grant the condition requiring a survey was not made by the grant *a condition precedent.*

"According to the regulations for a granting lands," said
364 the court, "it was necessary that a plan or sketch of its lines and boundaries should be presented with the petition, but in the construction of these regulations, the governors appear to have exercised a discretionary power to dispense with it under certain circumstances. It was not required in the present instance. The reason assigned for it in the petition was the difficulty of preparing it, the land lying in a wilderness country on the confines of the wild Indians. This reason was deemed by the governor sufficient, and the grant issued without it."

In view of these decisions I am of opinion that the grantees in this case did not acquire a legal title; that they could grant no better title than they had; that through their conveyances the plaintiff acquired no legal title; and that therefore the judgment of the court of First Instance should be reversed.

COOPER, *J.*, Dissenting:

I concur in the above dissenting opinion of Justice McDonough.

Judgment affirmed.

365 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court.

R. G., No. 1244.

LA COMPAÑIA DE TABACOS DE FILIPINAS, Appellee,
vs.
MIGUEL TUPIÑO ET AL., Appellants.

Application for Rehearing.

Now come the appellants, by their undersigned attorneys, and, in accordance with rule 30 of the Rules of the Supreme Court, respectfully move that the above entitled cause be reheard by the court, and, in support of said motion, set forth the following grounds:

I.

The decision of the court in the above entitled cause is contrary to law, in holding that the appellants, not being parties or privies to the original grants from the Spanish Government on which appellee's title is founded, cannot set up as a defense the insufficiency or nullity of the said grants; in holding that Article 1302 of the Civil Code is applicable; in holding that appellants can not set up as a defense the insufficiency of the aforesaid original grants because "the lands in question must be restored to the grantor, and could not remain in defendants' possession."

366 These errors are apparently due to a misapprehension of appellants' defense: appellants do not seek the nulification of the original grants, but maintain that said grants are null and ineffectual without performance of the condition precedent contained therein. The court has overlooked the fact that appellants are defendants in an action of ejectment, and in possession of the land, and that, under denial of appellee's title, they may, as a perfect defense to the action, prove title either in themselves, or in the State, or in any third person.

II.

The court's holding that the rigistration by plaintiff of its title established plaintiff's ownership of the land in question is based upon a misapprehension of fact. The record shows that the land registered by plaintiff is not coextensive with the land claimed by plaintiff in its complaint and which includes the lands held by the defendants, the inscription of plaintiff's title in the land register shows a much less extent than that of the lands whose ownership is set up in the complaint; and, as defendants' holdings are not shown to be embraced within the lands registered, but, on the contrary, appear to be within the land claimed but not registered, the registration affords no support to the complaint.

III.

The Supreme Court misapprehends the finding of the trial court that the lands held by the defendants are within the boun-
367 daries of the hacienda de San Luis y La Concepcion. The boundaries referred to in that finding of the trial court are the boundaries as alleged in the complaint, not the boundaries shown by plaintiff's title deeds presented as evidence. Appellants admit that the lands in question are contained within the boundaries alleged in the complaint to be the boundaries of the said hacienda. The Supreme Court has overlooked the true issue of fact raised by appellants in the discussion of the trial court's finding of fact in the eighth assignment of error and in paragraph C of the second assignment of error. Appellants' point is that the boundaries of the hacienda as shown by the evidence are not the boundaries set up in the complaint, and that the lands in litigation, though included in the latter, are not shown to be included in the former.

IV.

The Supreme Court has overlooked the material point urged by appellants under their eighth assignment of error, on page 49 of their Spanish brief, that the trial court's joint judgment for damages against eighty defendants is erroneous, inasmuch as each of said defendants is alleged by plaintiff and found by the trial court to be occupying a distinct and separate parcel of land, with no privity of community of interest with his codefendants, and each of said defendants has filed a separate answer for such distinct parcel, and maintained a separate defense.

368 V.

The questions raised in this appeal are of very great importance not only to the parties immediately concerned, but to the courts and the people of the Philippine Islands. It is within the knowledge of this Honorable Court that, because of the enactment of the land registration act, and for other reasons, litigation over land-titles is increasing and will probably occupy much of the time of our courts in the future. The decision of this Honorable Court in this cause will establish precedents and authorities which will be applied in many actions of ejectment and other actions involving title and possession of real property, and will affect the titles of a considerable part of the lands in these Islands.

VI.

The prevailing decision in the above entitled cause is signed by only four of the members of this Honorable Court,—the smallest number which could give it effect. Two of the Justices have subscribed a dissenting opinion, and one has not taken part in the decision.

It is respectfully urged that this appeal, of so great importance as

a precedent which shall establish many points of procedure and of substantive law affecting land tenure, should receive the most thorough consideration of the entire court, and that the points decided should be supported, if possible, by the entire court.

Manila, April 29, 1904.

PILLSBURY AND SUTRO,
Attorneys for Appellants.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 30 day of April, 1904.

J. E. BLANCO, *Clerk,*
By E. H. COLE, *Deputy.*

369 DEPARTMENT OF FINANCE AND JUSTICE,
MANILA, *August* 31*st*, 1904.

Hon. Florentino Torres, Associate Justice of the Supreme Court, Manila.

DEAR JUDGE TORRES: The accompanying telegram from the provincial governor of the province of Isabela to the Executive Secretary, explains itself. The bearer of this letter is the secretary of the Compañia General de Tabacos de Filipinas.

The difficulties of the situation are all explained in the telegram. I have been making a careful examination of Act No. 867. Section I, subparagraph *e*, defines interlocutory jurisdiction which a judge of the Supreme Court may exercise. I think that it gives to a judge of the Supreme Court the power to exercise interlocutory jurisdiction throughout every district in the Islands, and that jurisdiction may be exercised in Manila. The order necessitated by the terms of the telegram is a purely interlocutory one, and it therefore seems to me that you might have power to make those that are necessary. The case is one of some urgency, and apparently there is no chance for injury to result to any person from furnishing the desired relief. You will know, of course, whether you can exercise jurisdiction or not.

370 After determining the matter and making the necessary orders if you decide that you can take jurisdiction, I shall be glad to have the enclosed telegram returned to this office so that it may be filed in the Executive Bureau.

Very respectfully,
HENRY C. IDE,
Secretary of Finance and Justice.

True Copy,
(Signed) BLANCO.

ILAGAN, *August* 30, 1904.

Ex. Secy. Palace, Manila.

Tabacalera Company has forty thousand four hundred pesos Mex. Money on deposit with Provincial Treasurer thirty thousand four hundred pesos as bail for three defendants criminal case. Ten thousand pesos and civil case now holding in Supreme Court, the Company has given bond in the criminal case and the same has

been approved by Judge McCabe and the bond in civil case has been approved by Judge Johnson of Supreme Court and clerk here notified but owing to absence from district of Judge McCabe no one is authorized to issue order to treasurer to return money. I wired McCabe who stated that he could not legally issue order until his return to district. All the tobacco Company here have shipped their Mexican money to Manila and have been paying out Conant and there is very little Mexican money circulating. Tabacalera Company are very anxious to get this money and ship to Manila before October first as they have complied with the law think some steps should be taken to have money turned over to them at once if Ross or McCabe are in Manila they can explain fully.

(Sgd.) CURRY,
Provincial Governor, 1205A.

True Copy.
(Signed) BLANCO.

(Title, Court, Cause.)

Order.

The certified copies of the official letter of the Secretary of Justice and the copy of a telegram sent from Ilagan having been examined, let them be joined to the papers connected therewith, and let the decree of the 25th of last month be put into effect, and for that purpose let a written order be sent to the Clerk of the Court of First Instance of Isabela de Luzon, charging him to immediately inform this Court on fulfillment of the same and that he furthermore notify the treasurer of the Province of this resolution for the same purpose.

(Signed) E. FINLEY JOHNSON,
Justice Supreme Court of the Philippines.

371 *Petition for New Trial.*

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

Extract from the Proceedings During the Session of this 18th Day of April, 1905.

The court having considered the petition presented by Pillsbury & Sutro in case No. 1244, entitled La Compañia General de Tabacos de Filipinas *vs.* Miguel Tupiño *et al.*, praying for reconsideration of the decision dated April 22, 1904, decreed:

That nothing new from what had been before considered in the trial of the case, having been alleged, the motion for rehearing is denied.

(S'g'd) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands,
By H. D. McGEORGE, *Deputy.*

UNITED STATES OF AMERICA:

Supreme Court of Justice of the Philippines.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINOS, Plaintiff and Appellee,

vs.

MIGUEL TUPIÑO ET AL., Defendants and Appellants.

Concerning Unlawful Detainer of Lands.

372 The plaintiff and appellee appears and alleges:

That in the present case, begun in the court of first instance of Isabela, island of Luzon, on October 20, 1902, by the plaintiff, and bond having been previously given, there was issued *ex parte* a preliminary injunction prohibiting the defendants from removing fences or trees of the hacienda on the part detained, from ploughing and reaping on it corn and tobacco, from selling the latter and from selling half of the corn, etc.; and another order, to deposit into the hands of a receiver, named for that purpose, after the same had given bond, all the corn and tobacco grown by them.

These orders were afterwards modified for the purpose of increasing the receiver's bond and to exclude from the goods deposited the corn, the court orderjng the said corn to be returned to the defendants.

Sentence in the case was rendered on the 24th of December, 1902, in favor of the plaintiff, declaring permanent from said date the preliminary injunction and ordering the bond of the administrator to be cancelled after the rendition of his accounts, and ordering the tobacco deposited to be delivered to the plaintiff.

That decision having been appealed from by the defendants to this Honorable Supreme Court, there was presented during the appeal an incidental petition requesting that the preliminary injunction be decreed ineffective, and this Honorable Court on the

373 9th of November 1903, modified the injunction, releasing the defendants from the prohibition imposed on them in reference to growing and reaping on the land in question without prejudice to what should be decided definitely in the case respecting the ownership in possession of said lands.

From this order this plaintiff asked for a reargument, which was denied.

On the 22nd of April 1904, this Honorable Court affirmed the sentence appealed from with the costs against the appellants.

These have moved for a rehearing which was denied on the 18th of the present month, said sentence of this Court affirming that of the court of first instance from which the defendants appealed therefore now being effective.

And since the 20th of October 1902, two years and a half ago, the plaintiff has not been able to receive any benefit from his lands which were in the power of a receiver and the defendants on the con-

trary continued growing and reaping on them since November 1903, to within a year and a half up to this date, with evident and grave injury to the interests of petitioner;

This Honorable Supreme Court is prayed that according to the law as provided in the last paragraph of section 506 of the code of civil procedure now in force, by special order decree the immediate forwarding of the sentence which ought to have been already written according to section 29 of the rules of this Honorable Court,
374 to the court of first instance of Isabela, island of Luzon, and that because of the urgency of the case said remittiture be anticipated by sending by telegraph to said court that part of the sentence which contains the decision and whatever more should be proper.

Manila, 24th of April 1905.

(S'g'd) FRANCISCO DOMINGUEZ,
Attorney for Appellee.

S. José, 17, Intramuros.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 25th day of April, 1905, at 9.5 a. m.

J. E. BLANCO, *Clerk,*
By H. D. McGEORGE, *Deputy.*

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

Extract from the Proceedings of the Session of This 26th Day of April, 1905.

Having considered the petition presented by the attorney Dominguez in case No. 1244, La Compañia General de Tabacos de
375 Filipinas *vs.* Miguel Tupiño *et al.,* petitioning for the reasons that are therein expressed, that the immediate return of the record to the lower court be ordered for execution of the sentence, the court decrees:

Final judgment should be immediately entered in the case referred to by the clerk of this court and that he should send the same to the Judge of first instance for its execution.

(S'g'd) J. E. BLANCO,
Clerk of the Supreme Court,
By H. D. McGEORGE, *Deputy.*

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINOS, Plaintiff and Appellee,

vs.

MIGUEL TUPIÑO ET AL., Defendants and Appellants.

Judgment, April 29, 1905.

Book of Decisions, F. Registry No. 1244.

This court having acquired due competency for the hearing of the above entitled case, which has been submitted by both parties
376 for decision, and after it being considered by the court upon the records, and its decision and order for judgment having been registered on the 22nd day of April 1904;

By virtue of said order it is hereby decreed that the sentence of the court of first instance of Isabela, dated December 24, 1902, and against which was interposed the above mentioned appeal, be affirmed in all its parts with the costs in this instance against the appellants.

It is ordered moreover that * * * recover from * * * the sum of * * * dollars United States Currency and of * * * Mexican pesos as costs.

(S'g'd) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

UNITED STATES OF AMERICA:

In the Supreme Court.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINOS, Plaintiff and Appellee,

vs.

MIGUEL TUPIÑO ET AL., Defendants and Appellants.

Whereas the defendants in the above entitled action have
377 given bond in the sum of P. 30,000 Philippine Currency to answer for costs and damages that might be caused by the appeal interposed by them, and

Whereas all the above mentioned defendants are residents of the province of Isabela;

Therefore the above mentioned court is respectfully prayed that after the amount of the required bond for the purpose of appealing the said case to the Supreme Court of the United States has once been fixed, that the defendants be given two months time in order to prepare and present said appeal bond.

It is further prayed that in case that there should be a Judge or Clerk of court of the court of first instance performing his duties in

said province of Isabela at the time that said bond should be perfected, that said Judge or Clerk be permitted to approve or disapprove the same in place of this Honorable Supreme Court;

And moreover that until further order of this Court the order issued on the 26th of April, 1905, by said Court, ordering its clerk to send to the court of first instance of the province of Isabela the decree ordering the execution of the sentence in said case, be revoked.

Very Respectfully,

PILLSBURY & SUTRO,
THOMAS D. AITKEN,
Attorneys for the Defendants and Appellants.

Filed in the clerk's office of the Supreme Court of the Philippine Islands this first day of May 1905.

378 (Sgd.) J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

UNITED STATES OF AMERICA:

In the Supreme Court.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,
vs.
MIGUEL TUPIÑO ET AL., Defendants and Appellants.

The defendants and appellants herein, by their attorneys Pillsbury & Sutro and Thomas D. Aitken, respectfully appear and except to the decision of the Honorable The Supreme Court of the Philippine Islands affirming the decision of the court of first instance, and except to the order denying the motion for a new trial, and petition the court for leave to appeal from said decision and order to the Supreme Court of the United States of America, the value of the said lands and crops involved being more than the sum of $25,000 Dollars United States Currency;

And further request that the clerk of the Supreme Court
379 of the Philippine Islands be directed to have translated into English the record, testimony, stipulations and all of the proceedings therein, and certify the same to the Supreme Court of the United States of America.

PILLSBURY & SUTRO,
THOMAS D. AITKEN,
Attorneys for the Defendants and Appellants.

Filed in the clerk's office of the Supreme Court of the Philippine Islands this first day of May, 1905.

(Sgd.) J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

Extract from the Proceedings Held in the Session of This First Day of May, 1905.

The Court having considered the petition presented by Messrs. Pillsbury & Sutro and Thomas D. Aitken in the case entitled La Compañia General de Tabacos de Filipinas *vs.* Miguel Tupiño *et al.*, interposing on behalf of the defendants an appeal to the Supreme Court of the United States of America from the judgment definitely entered in the said case on the 29th of April last, decrees:

380 That, considering that it is not clear in the records the value involved in the litigation;

And considering that an appeal is only proper when the amount involved exceeds $25,000 United States Currency;

At present the right to take said appeal is denied and considering the petition presented by the same Gentlemen in the same case, praying that the order of the 26th of April, by which the clerk was ordered to return to the court of first instance of the province of Isabela the records for execution of the sentencce be revoked;

It is ordered, in view of the appeal interposed by the defendants and in view of article 506 of Act No. 190 that said order be ineffective until further action be taken.

(Sgd.) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands,
By H. D. McGEORGE, *Deputy.*

381 (Title, Court, Cause.)

The undersigned, of age, and a resident of this capital having been duly sworn alleges: That he is certain that the 447 hectareas, the possession *is* in litigation, do not amount in value to $25000, inasmuch as the 3956 hectareas of which the whole extent of the Hacienda de San Luis y la Concepción consists has been taxed at the maximum rate of taxation at the value of $88925, as is shown by the receipt annexed hereto, $22.47 being therefore the sum corresponding to each Hectarea which amounts to $10044.09 for the 447 hectareas.

Manila May 2, 1905.

(Signed) I. MUNTADAS.

Subscribed and sworn to before me this second of May 1905, on production of personal cedula or certificate of registration issued at Manila the 25th January 1905 under No. 14049-A.

(Stamp.)

(Signed) FRANCISCO DOMINGUEZ,
Notary Public.

My commission terminates the 31st December, 1906.

(Title, Court, Cause.)

The undersigned, José Traviesas, of age, an employee and property owner, native of Tuguegarao, Cayagan Province, Philippine Islands, having been duly sworn alleges:

That he is certain that the value of the lands the ownership of which is in dispute in the above mentioned cause, does not even approximate the sum of twenty five thousand dollars gold, inasmuch as of the 447 hectareas more or less which are the subject of the litigation there are cultivated only some hundred and twenty thereabouts, the value of which, taken into consideration the situation of the lands and the current value thereof in Isabela Province, does not exceed at the most, sixteen thousand pesos local currency; and the three hundred and twenty seven hectareas remaining, which are not in a state of cultivation, cannot be worth more than nine thousand eight hundred and ten pesos, local currency, or thirty pesos a hectarea.

Manila 3rd May 1905.

382 (Signed) JOSÉ TRAVIESAS.

Subscribed and sworn to before me this third day of May 1905, on production of personal cedula or certificate of registration issued at Tuguegarao on the 19th April 1905, No. 332647-AA.

(Stamp.)

(Signed) FRANCISCO DOMINGUEZ,
Notary Public.

My commission expires December 31st 1906.

(Title, Court, Cause.)

The undersigned, Aurelio Medel, of age, an employee, and resident of Ilagan, Province of Isabela de Luzon, Philippine Islands, temporarily residing in the city of Manila, having been duly sworn, alleges:

That he knows that the value of the lands the title to which is in dispute between the above-mentioned parties to the suit, does not even approximate the sum of twenty five thousand dollars taking into consideration that of the four hundred and forty seven hectareas or thereabouts, the subject of the litigation there are no more than some hundred and twenty hectareas more or less, under cultivation, and these may be worth at a maximum valuation, some fifteen or sixteen thousand pesos local currency, taken into consideration the current prices and the valuation at which the lands in Isabela Province have been taxed; and with regard to the remaining three hundred and twenty seven hectareas not under cultivation they cannot be of a greater value than nine or ten thousand pesos or approximately thirty pesos a hectarea.

He attests further more that, having had more or less direct connection with the trial, that the sum of thirty thousand pesos fixed by the Judge of First Instance of Isabela as the bond of the defendants to enable them to appeal from the sentence rendered by said Court,

was not solely and exclusively for the purpose of guaranteeing the crop which the lands in dispute might yield, but for the further purpose of guaranteeing the damages which the plaintiff
383 company might suffer if unable to enter into possession of said lands and put them all in condition for development, and to guarantee furthermore by means of the bond the indemnity of nine thousand pesos in favor of the plaintiff company, which the defendants were sentenced to pay.

Manila, 3 May, 1905.

(Signed) A. MEDEL.

Subscribed and sworn to before me this 4th day of May, 1905 on the production of his personal cedula or certificate of registration issued by the Collector of Internal Revenue in Manila on May 4th, 1905 numbered 158209—B.

(Stamp) (Signed) FRANCISCO DOMINGUEZ,
Notary Public.

My Commission expires December 31st, 1906.

(Title, Court, Cause.)

The undersigned, of age, Lieutenant Colonel of Engineers in the Spanish Army, supernumerary, former Engineer in Chief of the Philippines Public Works and of the Public Works of the City of Manila, and authorized by the American Government to practise his profession in this archipelago, having been duly sworn alleges.

First. That the Hacienda de San Luis y La Concepción the property of Compañia General de Tabacos de Filipinas, in the province of Isabela de Luzon, and measuring three thousand nine hundred and fifty six hectaraes, officially taxed at the valuation of 88,925 dollars gold, is well known to him.

Second. That he is well acquainted with that portion of the Haci-nda which is in litigation, which measures four hundred and forty seven hectareas of which only some hundred and twenty are under cultivation.

Third. That the value, computed by official taxation is $22.47 gold a hectarea, and consequently of a total value of 10,004.09 for the 447 hectareas according to the last official valuation.

384 Fourth. That according to his true knowledge and belief and taking as a standard the sale of similar lands in the Cagayan Valley of which he is cognizant, he alleges that the hundred and twenty hectareas under cultivation are worth, at the very most 7200 dollars gold, at the rate of sixty a hectarea, and the remaining three hundred and twenty seven, at the rate of ten dollars, are of the value of three thousand two hundred and seventy, according to the tax valuation of the same made by the Government.

Manila, May 3rd, 1905.

(Signed) CARLOS HERAS.

Subscribed and sworn to before me this 4th day of May 1905 on production of his personal cedula or certificate of registration issued

by the Collector of Internal Revenue at Manila Feb. 11th 1905 numbered 994201 A.

(Stamp) FRANCISCO DOMINGUEZ,
Notary Public.

My Commission expires the 31st of December 1906.

(Title, Court, Cause.)

Dionicio Cuntapay, on presenting his personal cedula No. A 942118 issued on Feb. 25th, 1905, by the Internal Revenue officer at the town of Cauayan, Isabela province, P. I., in which cedula it appears that he is 34 years of age, a native of Tugueguerao, in the Province of Cagayan, having been duly sworn, alleges: That I am a resident of the Province of Isabela, P. I., and have so been since the year 1894, and my profession is that of harvester of tobacco; I am well acquainted with all the appellants in the above entitled cause, as well as with the lands which are the subject of said action and which are used for the cultivation of tobacco and corn; of the lands in dispute there are approximately 225 hectareas of broken ground free from woods and their value according to the price of tobacco lands in the barrio of Minanga and Mabantad in the jurisdiction of the town of Cauayan, Isabela, where the said lands are situated is at least 250 pesos Philippine currency a hectarea; the other lands in the possession of the appellants, that is to say 225 hectareas more or less, consist of woods and grazing grounds for carabao and other cattle, and the value of these lands is not less than 75 pesos a hectarea; the said appellants have their houses and waresheds erected on the lands in litigation, and are worth at best less than ten thousand pesos; I know of my own personal knowledge that the net value of the annual income of these lands amounts to from twenty five thousand to thirty thousand pesos; I was present at the sale of tobacco raised on the said lands in the possession of the appellants in the years 1900, 1901, and 1904; in 1900 the tobacco harvests of the appellants in the barrio of Minanga and part of the Barrio of Mabantad were sold at forty thousand pesos more or less to various houses; in 1901 the same crops sold for 25000 pesos more or less, and in 1904 the same crops were bought by the Commercial House "Orient" of Manila and by Weber Brothers of Tuguegarao for 25000 pesos. All the appellants, besides cutivating tobacco plant corn which serves as food for them and families, the value of which is not less each year than ten thousand pesos; the just and reasonable value of the lands which are the subject of the above entitled cause and now in the possession of the appellants according to my best knowledge information and belief, is from 80000 to 100000 pesos Philippines currency.

385

(Signed) DIONISIO CUNTAPAY.

Signed and sworn to before me this 13th of May 1905.

(Signed) FRANCISCO TACCAD.
Clerk of the Court of First Instance, First District.

27—411

(Title, Court, Cause.)

Nicolas Lacaste, on presenting his personal cedula No. A 948985 issued on the twel-th of April 1905, by the Internal Revenue Officer in Naguilian, Province of Isabela, Philippine Islands, by which cedula it appears that he is 43 years of age and a native of Tagudin Ilocos Sur, after having been duly sworn, alleges: I am a resident of the Province of Isabela de Luzon, P. I., and have so been for twenty years, and by profession am a proprietor and tobacco har-
386 vester; I know the barrios of Minanga well, known likewise as the agricultural lands of Joaquin Guzman and Mabantad situated in the jurisdiction of the town of Cauayan in the said Province; I know all the appellants in the above entitled cause and I know the lands which they occupy in the said barrios, and which are now the subject of this action; I know that the greater part of those lands are given over to the cultivation of tobacco and corn, and according to the current price quoted in this locality they are worth at least 250 pesos Philippines Currency a hectarea, that is to say at least a hundred thousand pesos for the 450 hectareas consisting of broken and wooded lands occupied by the appellants exclusive of the value of their houses and ware-sheds which are probably worth 15000 pesos; I know of my own personal knowledge that the annual tobacco crops of the appellants in this cause is from 20000 to 25000 pesos; in the year 1900 I as broker or buyer for the house of Baer Senior and Company of Manila, bought that year's crops from all the appellants in the Barrio of Minanga and from of the Barrio of Mabantad, and paid them the sum of 25000 pesos; in 1901 as broker or commission agent for the House of "La Insular" of Manila, I bought a third part of the crops of the same year from the appellants in the said barrio of Minanga only, and paid therefore the sum of 10000 pesos; I know of my own certain knowledge that the harvest of 1904, that is to say the last harvest, was worth 25000 pesos, and was sold at that price to the Casa "Oriente" of Manila and to the Weber Brothers of Tuguegarao, Isabela; I know of my own true knowledge as a cultivator of tobacco and corn that the annual value of the corn crop which the appellants are enabled to gather from the lands cultivated by them in the barrios of Minanga and Mabantad is 15000 pesos at least. Because I have lived in the barrio of Minanga for ten years I know of my own true knowledge that the net annual income from the lands in dispute occupied by the said appellants in the
387 above entitled cause is not less than 20000 pesos; the reasonable valuation of the said lands in the possession of the appellants is from 90000 to 100000 pesos; it would be difficult or improbable that one could succeed in buying a tract of land of similar character for less than 90,000 pesos.

(Signed) NICOLAS LACASTE.

Signed and sworn to before me this 13th day of May 1905.

(Signed) FRANCISCO TACCAD,
Clerk of the Court of First Instance of Isabela.

(Title, Court, Cause.)

Teodulfo Flor-Mata on presentation of personal cedula No. 945764 issued on the eighth of February 1905 by the Collector of Internal Revenue in Ilagan, Province of Isabela, P. I., in which cedula it appears that he is twenty eight years of age and a native of Vigan, Ilocos Sur, after having been duly sworn alleges: I am a resident of the Province of Isabela de Luzon, P. I., and have been for the past nine years, and am by profession a merchant and tobacco buyer; I am well, acquainted with lands in the possession of the appellants in the above entitled cause, and know that they are situated in the barrios of Minanga and Mabantad, in the jurisdiction of Cauayan Province of Isabela, P. I. I likewise am personally acquainted with a large number of the appellants who are now in the possession of those lands in the cultivation of tobacco and corn, and that according to the price of lands of a similar character in Isabela province, they are of the value of three hundred pesos a hectarea, Philippines Currency, at the least; and I know that, if well worked (and the appellants in the above entitled cause whom I know personally, are first class workmen) one hectarea produces eighty bales of tobacco a year, and according to the usual price in said province they are of the value of 320 pesos, or four pesos the bale; I do not know the exact number of bales which the
388 said appellants gather each year, but according to my best knowledge, information and belief it is not less than six or seven thousand bales; judging by the extent of the cultivated land which I have seen in the said Barrios of Minanga and Mabantad in the appellant's possession by conservative estimate the value of the corn which they produce amounts to more than 12500 pesos every year; that tobacco lands in this province which have been broken and cleared of woods are difficult to find on sale, and most of them are of the fixed value to the owner of at least 300 pesos a hectarea, since one hectarea can bring its owner 320 pesos a year by the tobacco crop alone according to my best knowledge information and belief, as I have many times gone through the barrios of Minanga and Mabantad, and the lands occupied by the said appellants contain at least 250 hectareas, all broken and clear of woods, and on which the said appellants and their families have likewise erected their houses and waresheds, and these houses and -aresheds are worth by a fair valuation 10000 pesos; the rest of the lands in the possession of said appellants consist of woods and fields which serve as pasture land for carabao and cattle; a just and fair valuation of the lands in dispute and in the possession of the appellants in the above entitled cause is a hundred thousand pesos Philippine currency, and the net income therefrom from 20000 to 25000 pesos a year.

(Signed) TEODULFO FLOR-MATA.

Signed and sworn to before me this 13th day of May 1905.

(Signed) FRANCISCO TACCAD,

Clerk of the Court of First Instance of Isabela.

389 (Court, Title, Cause.)

R. S. MacDougall being first duly sworn deposes and says: I am a resident of the province of Isabela, Philippine Islands, and I am one of the attorneys of record for the appellants in the above entitled cause; I know of my own personal knowledge that according to the records in the office of the Provincial Treasurer of Isabela Province, the assessed value of the lands in the Barrios of Minanga and Marahuirahui, Municipality of Cauayan, is placed at One Hundred and seventy seven thousand eight hundred and fifty pesos (P. 177,850.00); that the lands comprised in the said barrio of Minanga form a part of the subject matter of the above entitled action with the exception of about 25 hectareas, the total extent of the said barrio being about 150 hectareas; that it appears from the records in the office of the Provincial Treasurer of said Province that the Compañia General de Tabacos de Filipinas has never declared any property or land in the barrio of Mabanted, Municipality of Cauayan; that on the 23rd of November 1902 thirty eight of the appellants in the above entitled action appeared before the municipal Secretary of the town of Cauayan to declare the property occupied by them in said Barrio of Mabantad according to law, and which was valued by them at 71000 pesos Mexican Currency, according to the declarations prepared by them at the time for that purpose; that said declarations were refused by the said Municipal Secretary, José Damatan, who stated that he had been advised by the Provincial Treasurer of said Province, one Nathan B. Stewart, to refuse to administer the oath to said appellants and not to accept their declarations; I make this affidavit because I know the facts as stated herein to be true of my own personal knowledge, and because the deputies and clerks at present in the office of the Provincial Treasurer, and the Provincial Secretary have refused to furnish me with certified copies of the records of said office and which would show the facts as I have stated
390 above as to the value of the lands in the barrios of Minanga and Marahuirahui, Municipality of Cauayan, and that the fact that the Compañia General de Tabacos de Filipinas has never declared any property or land in the Barrio of Mabantad in said Municipality; I have offered to pay the tax imposed by the Internal Revenue Law for certified copies of public records but the said deputies and clerks in charge of said office of the Provincial Treasurer have continued to refuse to issue or sign same on the ground that they "know nothing about such things," that they "have never had any experience in such matters," and the Provincial Secretary stated that Mr. Killen, the acting treasurer being absent from the office might become angry with him if he issued or signed certified copies of the records in his (the acting treasurer's) absence.

(Signed) R. MACDOUGALL.

Subscribed and sworn to before me, the undersigned authority, by R. S. MacDougall, who exhibited to me his cedula personal, No.

A 996394, issued by the Collector or Internal Revenue at Manila on the 16th day of February, 1905, this the 13th day of May, 1905.

(Signed) FRANCISCO TACCAD,
Clerk of the Court of First Instance, First District.

(Stamp.)

ILAGAN, ISABELA, I. F., *May* 15, 1905.

I certify: that in the archives of the office of the Provincial Treasury of Isabela, P. I., that on page 14 of book 3 of Registration of Lands during the year 1904, it appears that the assessed value of the lands taxed in the name of the Compañía General de Tabacos and lying within the barrios of Minanga and Marahuirahui, Municipality of Cauayan is P. 177850.00.

(Signed) FRANK N. KILLEN,
Acting Supervisor Treasurer of Isabela.

391 *Contract of Rental for Agricultural Estates in Isabela de Luzon.*

Conditions under which the undersigned head of the family contracts with The Compañia General de Tabaco de Filipinas as tenant of the Agricultural Lands which the said Company holds in the Province of Isabela de Luzon.

1. The debts which the Company may satisfy for the account of the undersigned, as well as the advances which he may receive in specie or coin before starting on his journey to the Hacienda, will form part of his debt as tenant, and will be noted in the present pamphlet, binding him to redeliver them in the manner hereinafter mentioned.

2. All the expenses of the journey from the town where the undersigned resides to the Hacienda will be paid by the Company.

3. On arriving at the Hacienda the Company will house him and his family suitably, until such time as he shall have built his house, for the construction of which he may use any building materials to be found on the land possessed by the Company.

4. The Company will provide at the expense of the undersigned the implements and stock necessary for the work.

5. From the time of his arrival at the Hacienda the Company will furnish *to* each person of the family over three years of age with two gantas and a half of rice a week until such time as the undersigned is in a position to plant corn and reap the first crop.

The amount of rice that he consumes from the time that he arrives at the Hacienda will be entered in his pamphlet and will form part of his debt to the Company.

6. During the first year of his stay at the Hacienda, the
392 Company will pay the cost of his cedulas will furnish him with ordinary and protective apparel, household effects and money in case of urgent need, all at his expense, and to be entered in his pamphlet as a repayable obligation.

7. The stock as well as the implements and other articles advanced including rice will be charged to his account according to its value without interest.

8. On his arrival at the Hacienda a plot of land will be assigned to him suited to the size of his family, which he will clear and put under a state of cultivation. On this plot which will be assigned to him he will plant one third in tobacco, and two thirds in corn, or in whatever other crop that he may choose for his maintenance.

9. The Company will collect no rental for the two thirds cleared which the undersigned will reserve for his food supply either in specie or coin.

10. Nor will the undersigned or any member of his family be under the obligation of lending his services to the employees of the Hacienda, or of furnishing them with p-ultry, eggs, fish, game, or vegetables. These products will be his own property and he may sell them freely if he so choose.

11. The Company will furnish without cost medical attendance necessary medicines.

12. Moreover, as in the case of all the tenants he will enjoy the advantages granted by the Colonial Law.

13. The undersigned promises to subject himself together with his family to all the rules and internal regulations prescribed by the Hacienda; and to be on hand at working hours and to carry on the work in the form and manner prescribed.

14. The cultivating of tobacco will be performed in the manner which may be specified to him on sprouting and short. If this is done by plant he will agree to the rate specified by the Hacienda for this system.

393 15. The Company on its part the camarines de oreo (air sheds warehouses or store houses) which the tenants may require allowing them the value of the wood which they shall gather for this purpose, but once when they are built the group which makes use of them shall be liable for their preservation, this shall be the common duty of the tenants which form the group.

16. The undersigned will be liable for the tobacco that he cuts, and liable in common with the others for that which belongs to the group of which he is a member until delivered in the warehouses in Mandala.

17. The construction and preservation of roads and bridges shall be shared in common by all the tenants of each group in the district in which such roads and bridges are as well as the streets on which their houses are situated.

18. The Company having an equal interest with the tenant in the production of tobacco, no work will be done on the roads except at such times as the work in the fields is not urgent.

19. The tobacco which the undersigned with his family may produce will be sold to the Company in the manner established by the Hacienda. A third part of the total value of the crop will be delivered to the Company, the owner of the lands, as fee or rental, and the Company will pay the undersigned in currency for the remaining two thirds.

20. The Company will reserve from the two thirds of the value of the crop one quarter of the amount which the undersigned is entitled to therefor, until the debt which he owes the Company is paid in full.

21. If the undersigned after payment of his debt and on completion of the present contract should leave the service of the Hacienda, he will have no right to make any claim for any amount for work performed in the fields, nor shall he have any claim for the house in which he lives, nor shall he have any right to destroy any plantations or gardens which he may have in his fields or lot. Nor shall he have the right to instigate any complaint if he is dismissed from the Hacienda for unsuitableness or any other cause.

394 22. The present contract will remain in force for at least four years, if in this time the undersigned has paid the debt which he may have contracted with the Company, but the debt shall continue until satisfied, if not satisfied within the said term.

On signing this document the undersigned binds himself and his family to fulfill the above mentioned conditions.

395 (Title, Court, and Cause.)

The defendants and appellants in the above entitled cause by their attorneys Pillsbury & Sutro and Thomas D. Aitken appear and respectfully show: That on the 1st of May, 1905, they filed with the clerk of this court their written exception to the sentence of the supreme court confirming the sentence of the court of first instance and their exception against the order denying the motion for a new trial and furthermore a petition wherein was prayed that an appeal be allowed against said sentence to the Supreme Court of the United States of America based on the fact that the value of the property in litigation exceeds $25,000 Gold and that the question of said appeal was not definitely decided for the reason that the value of the property in litigation did not appear of record; and whereas the said proof has now been presented and is now of record it is respectfully prayed that the Honorable A. C. Carson, one of the associate justices of the above entitled supreme court, issue an order allowing the appeal as aforesaid and that he order the clerk of the said supreme court to translate to the English language the record including the evidence, stipulations and all other proceedings had and done in said cause and that he certify the same to the Supreme Court of the United States of America; and it is further prayed that the said associate justice fix the amount of the bond to be presented by the appellants in order to obtain a stay of execution of the judgment appealed against and that he fix the time within which said bond should be presented.

Manila, P. I., June 12, 1905.

(Sgd.) PILLSBURY & SUTRO,
A. F. ODLIN,
THOS. D. AITKEN,
Attorneys for the Defendants and Appellees.

Filed with me this 12th day of June, 1905.

(Sgd.) A. C. CARSON,
Associate Judge, Acting as Vacation Judge.

396 (Title, Cause, and Court.)

The petition presented by the defendants and appellants having been duly heard;

And to the undersigned associate justice it appearing from the affidavits filed that the value in litigation exceeds the sum of $25,000 United States Currency:

Be it ordered that there be permitted and by virtue of this order it is permitted that an appeal to the Supreme Court of the United States be taken; and that after the translation to the English language by the appellant of the record, testimony and other proceedings had in this case, a certified copy of the same be transmitted to the said Supreme Court of the United States of America.

And it is further ordered that the bond for the purpose of this appeal be fixed in the sum of P. 40,000 Philippine Currency conditioned that the appellants pursue the appeal and pay the damages and costs that the appellee might suffer and that the order of execution be suspended upon the filing and approval of said bond until further order of the court.

Manila, P. I., July 3, 1905.

(Sgd.) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands.

Filed in the clerk's office of the supreme court of the Philippine Islands this 3rd day of July, 1905.

(Sgd.) J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

11-05 a. m.

397 (Title, Court, and Cause.)

The plaintiff and appellee appears and shows: That he affirms in writing the exception that he verbally took to the decision rendered in this cause by the Honorable associate justice A. C. Carson to the motion of the appellants; and therefore he excepts to the same in as much as it declares proven that the amount involved in litigation exceeds the sum of $25,000 and in as much as it permits an appeal to the Supreme Court of the United States and orders the translation to English of the record, evidence and other proceedings had in the case and their transmission by certified copy to the Supreme Court of the United States and fixes the amount of the bond at P. 40,000.

Manila, July 6, 1905

(Sgd.) FRANCISCO DOMINGUEZ.

Received copy.

(Sgd.) THOMAS D. AITKEN.

Filed in the clerk's office of the supreme court of the Philippine Islands this 10th day of July, 1905.

(Sgd.) J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

4-6 p. m.

398 (Title, Court, and Cause.)

To the plaintiff and Francisco Dominguez, its attorney:

Take notice that on Thursday 20th of July, 1905, at 3 p. m. a motion will be made before the Honorable A. C. Carson, one of the associate justices of the supreme court, in his chamber, praying for an extension of the time within which to present the bond in the above entitled case.

Manila, P. I., July 20, 1905.

(Sgd.) THOS. D. AITKEN,
Attorney for Appellants.

Received copy, 20th of July, 1905, at 2.10 p. m.
(Sgd.) FRANCISCO DOMINGUEZ.

Filed in the clerk's office of the supreme court of the Philippine Islands this 20th day of July, 1905.

(Sgd.) J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

4-30 p. m.

399 (Title, Court, and Cause.)

To the defendants and Thos. D. Aitken, attorney for said defendants:

You are hereby notified that on Tuesday, the 8th day of August, 1905, at 9 a. m. a motion will be made before this Honorable court in the court-room of the same in the audiencia building, corner of calle Palacio and calle Postigo, Intramuros, city of Manila, Philippine Islands, praying that execution of the judgment rendered by this Honorable court in the above entitled action be ordered.

Said motion will be based upon all the papers, orders and documents on file in the record of this action and will also be based on the fact that the said judgment is now final and ready to be executed.

(Sgd.) COUDERT BROTHERS,
JOHN W. HAUSSERMAN,
CHAS. C. COHN,
D. R. WILLIAMS,
Attorneys for Appellee.

Received copy of the above this 28th of July, 1905,
THOS. D. AITKEN,
Attorney for Appellants.

28—411

Filed in the clerk's office of the supreme court of the Philippine Islands this 29th day of July, 1905.

(Sgd.) J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

10-06 a. m.

400 (Title, Court, and Cause.)

Affidavit.

Thos. D. Aitken, being first duly sworn, deposes and says: That he is one of the attorneys in the above entitled action;

That on the 19th day of April 1905 this Honorable court rendered decision denying the motion of appellants for a new trial;

That on the first of May 1905 appellants presented a petition praying that they be allowed an appeal to the Supreme Court of the United States of America and that the execution of the sentence be stayed until said petition be decided and to fix the bond which should be presented;

That on the third day of July, 1905, an order was signed by one of the justices of this Honorable court allowing the appeal and fixing a bond in the sum of Forty Thousand (P40,000) pesos Philippine currency;

That immediately after the signing of said order deponent telegraphed to the appellants notifying them to offer immediately the bond in the sum mentioned;

That owing to the lack of transportation facilities in these Islands, and especially in the province of Isabela, said bond was not received in Manila until about the 29th of July, 1905;

That all possible diligence to procure the said bond was employed and that due to the fact that all communication with the attorney of the appellants in Isabela province respecting the presentation of the said bond had to be done by telegraph, it happened that the bond contained several defects in matters of form and it was necessary to return it to remedy the said defects;

That said appellants are employing all possible diligence.

(Sgd.) THOS. D. AITKEN.

Subscribed and sworn to before me this 10th day of August, 1905.

H. D. McGEORGE,
Deputy Clerk of the Supreme Court of the Philippine Islands, Ex-officio Notary Public.

401 (Title, Court, and Cause.)

SEPTEMBER 7, 1905.

SIR: This supreme court in session of the 6th of this month resolved as follows:

"The court having considered the motion of Mr. Cohn in case No. 1244, La Compañia General de Tabacos de Filipinas against Miguel Tupiño *et al.*, praying that the execution of the judgment already

rendered by this court be ordered, said: Let it be as prayed for and let the case be returned to the trial court for execution of said sentence."

Respectfully,

(Sgd.) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

402 (Title, Court, and Cause.)

This is a motion dated July 20, 1905, for the extension of the period within which a supersedeas bond may be filed in this case. Under the provisions of section 1007 of the Revised Statutes of the United States the authority to grant permission to give the security required by law to stay process on a judgment appealed to one of the courts of the United States, after the period prescribed by law within which security may be given has expired is vested in one of the justices or judges of the appellate court and is not granted to the justices or judges of the court from whose judgment the appeal is taken. This motion should be and is hereby denied.

(Sgd.) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands.

403 (Title, Court, and Cause.)

Motion.

The defendants and appellants herein respectfully appear and pray that a reargument on the motion for the issuance of execution be granted. Said reargument will be based on the papers and record on file, and further on the ground that the judgment in the above entitled case is not sufficiently specific on which to issue execution in that said judgment merely requires delivery of the possession of the land to the plaintiffs and the payment of Nine thousand (P9,000) pesos as damages for the detention of the same by said defendants; said decision making no provision whatever for the disposal of the houses of said defendants or the improvements erected by them;

Furthermore defendants' and appellants' attorneys believe that, if given an opportunity to reargue said motion they can successfully demonstrate that it is within the inherent powers of this court to stay executions of its own judgments whenever it shall deem that justice requires it, and that the powers of this court are in no way controlled by the rules and regulations relating to procedure on appeals from Circuit courts of the United States to the Supreme Court.

Wherefore it is respectfully prayed that the order allowing execution to issue in said case be revoked and that a rehearing on said motion be granted.

Respectfully,

(Sgd.) PILLSBURY & SUTRO.
THOS. D. AITKEN.

Received copy September 9, 1905.
(Sgd.) COUDERT BROTHERS.

Filed in the clerk's office of the Supreme Court of the Philippine Islands this 9th day of September, 1905.

(Sgd.) J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

11:45 a. m.

404 SEPTEMBER 14, 1905.

SIR: This supreme court in session of the 13th of this month decided as follows:

Having considered the petition filed by Mr. Thomas D. Aitken praying reconsideration of the decision of this court of the 6th of this month, whereby was ordered the return of case No. 1244, La Compañia General de Tabacos de Filipinas against Miguel Tupiño *et al.*, concerning ejectment from lands, in order that the judgment entered in said record, dated 29th of April 1905 be executed, and praying that he be granted a rehearing of the motion made by Mr. Cohn on the 29th of July last, the court said: It is hereby denied and said decision of the 6th of this month is in full force and effect.

Respectfully,

(Sgd.) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

405 (Title, Court, and Cause.)

Remittitur.

Honorable Judge Court of First Instance of Ilagan, Isabela, P. I., Greeting:

In conformity with the provisions of the law governing the case I send to you certified copies of the decision, judgment and orders dictated by the supreme court of the Philippine Islands in this case.

In testimony whereof I have hereunto set my hand and the official seal of this court this 14th day of September, 1905.

(Sgd.) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

406 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,
vs.
MIGUEL TUPIÑO ET AL., Defendants and Appellants.

Come now the defendants and appellants, and file the following assignment of errors upon which they and each of them will rely their appeal from the judgment entered by this Honorable Court on the 29th day of April, 1905, in the above-entitled cause.

I.

That the Court erred in holding that the appellants, not being parties or privies to the original grants from the Spanish Government on which appellee's title is founded, cannot set up as a defense the insufficiency or nullity of the said grants.

II.

407 That the said Court erred in holding that articles 1302 of the Civil Code is applicable.

III.

That the said Court erred in holding that appellants cannot set up as a defense the insufficiency of the aforesaid original grants because "the lands in question must be restored to the grantor, and could not remain in defendants' possession."

IV.

That the said Court erred in not holding that the trial court erred in admitting as evidence Exhibits 1 to 7 offered by plaintiff.

V.

That the said Court erred in not holding that the trial court erred in receiving as evidence Exhibits 8 and 9 offered by plaintiff.

VI.

That the said Court erred in not holding that the trial court erred in deciding that it would admit all the documents presented by the plaintiff and as many as it should offer in the future, and at the same time cautioning the defendants' attorney not to interrupt the witness (Macias) with objections.

408 VII.

That the Court erred in not holding that the trial court erred in admitting as evidence plaintiff's exhibit No. 13.

VIII.

That the Court erred in not holding that the trial court erred in admitting as evidence plaintiff's exhibit No. 14.

IX.

That the Court erred in not holding that the trial court erred in refusing to permit the witness Manuel Nieto, to answer in cross-examination the following question: "Do you recognize document No. 8 and do you know the contents thereof?"

X.

That the Court erred in not holding that the trial court erred in denying defendants' petition that the Registry Books of Cauayan and Angadanan should be brought into court for examination.

XI.

That the said court erred in holding the title to the property in question to be in plaintiff and appellee.

409 XII.

That the said Court erred in rendering judgment against defendants in said cause and that said judgment is contrary to law and the facts.

Wherefore, the said defendants and appellants pray that the judgment of the said Supreme Court of the Philippine Islands be reversed.

PILLSBURY & SUTRO,
THOS. D. AITKEN,
Attorneys for Defendants and Appellants.

410 UNITED STATES OF AMERICA, *ss:*

The President of the United States to La Compañia General de Tabacos de Filipinas, and W. A. Kincaid, Francisco Dominguez, and Coudert Brothers, its attorneys, Greeting:

You are hereby cited and admonished to be and apear at the Supreme Court of the United States at Washington, District of Columbia, United States of America, within sixty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the Supreme Court of the Philippine Islands wherein Miguel Tupiño *et al.* are plaintiffs, and you are the defendant in error, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 6th day of December, A. D. 1905 and of the independence of the United States the one hundred and twenty-ninth.

(Sgd.) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of the within citation and receipt of a copy thereof admitted this 21 day of December, 1905.

(Sgd.) W. A. KINCAID,
Attorney for Plaintiff & Appellee in the Lower Court.
(Sgd.) COUDERT BROTHERS.
(Sgd.) FRANCISCO DOMINGUEZ.

411 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Sociedad Anónima, Plaintiff and Appellee,

vs.

MIGUEL TUPIÑO ET AL., Defendants and Appellants.

Petition for writ of error in the above entitled cause to the United States Supreme Court was filed on January 14th, 1906, but was not taken under consideration at that time because it was not accompanied by a satisfactory bond for costs.

Applying the doctrine laid down in the case of Edwin H. Warner *vs.* 771 opositores, decided by the Supreme Court of the Philippine Islands, November 18, 1905, following Tupper *v.* Wise 110 U. S. 398 this petition should be and is hereby denied.

A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands.

412 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Sociedad Anónima, Plaintiff and Appellee,

vs.

MIGUEL TUPIÑO ET AL., Defendants and Appellants.

Come now the Defendants and Appellants and file the following assignment of errors on which they and each of them will rely their prosecution of the writ of error in the above entitled cause.

I.

The Court erred in ruling that the Appellants, for not being parties or privies to the original titles issued by the Spanish Government, on which the title of Appellees is based, cannot avail themselves of the insufficiency or nullity of said titles as a defense.

II.

The Court erred in ruling that Section 1302 of the Civil Code is applicable.

III.

The said Court erred in ruling that the Appellants can not avail themselves of the insufficiency of the aforesaid original titles as a defense because "the lands in question must be restored to the
413 grantor and could not remain in the possession of the Defendants."

IV.

The said Court erred in not ruling that the Trial Court erred in admitting as proofs the exhibits 1-7 offered in evidence by the Plaintiff.

V.

The said Court erred in not ruling that the Trial Court erred in admitting Exhibits 8 and 9 offered in evidence by the Plaintiff.

VI.

The said Court erred in not ruling that the Trial Court erred in deciding that he admitted all the documents presented by Plaintiff and whatever documents it might present later on, at the same time cautioning the attorney for the Defendants not to interrupt the witness (Macias) with objections.

VII.

The Court erred in not ruling that the Trial Court erred in admitting as proof Exhibit 13 of Plaintiff.

VIII.

The Court erred in not ruling that the Trial Court erred in admitting as proof the Exhibit 14 of Plaintiff.

IX.

The Court erred in not ruling that the Trial Court erred in refusing to permit the witness Manuel Nieto to answer the following question: "Do you know document No. 8 and are you acquainted with its contents?"

X.

The Court erred in not ruling that the Trial Court erred in denying the motion of Defendants to order the exhibition of the books of registry of Cauayan and Angadanan in Court for their in-
414 spection and examination.

XI.

The said Court erred in ruling that the title to the land in question was vested in Plaintiff and Appellee.

XII.

The said Court erred in rendering judgment against the Defendants in said cause and that the said judgment is contrary to law and facts.

Wherefore, Plaintiffs in error pray that the judgment of the Supreme Court of the Philippine Islands be reversed, and that judgment be entered reversing the judgment of the Court of First Instance, and for such other further and general relief as their cause may require.

(Signed) THOS. D. AITKEN,
(S'g'd) KENNEY, ODLIN & LAWRENCE,
Attorneys for Plaintiffs in Error.

Filed in the Clerk's Office of the Supreme Court of the Philippine Islands this 27th day of March, 1906.

J. E. BLANCO, *Clerk.*

415 Know all men by these presents, That we, Miguel Tupiño *et al.* as principals, and the American Bonding Company are held and firmly bound unto the La Campania General de Tabacos de Filipinas, Sociedad Amonima in the full and just sum of one thousand dollars, to be paid to the said the La Campania General de Tabacos de Filipinas its certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th, day of January, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a session of the Supreme Court of the Philippine Islands in a suit depending in said Court, between the La Compania General de Tabacos de Filipinas, Plaintiff and appellee and Miguel Tupino *et al.* were defendants and appellants a judgment was rendered against the said Miguel Tupino *et al.,* defendants and appellants, and the said Miguel Tupino *et al.* having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said La Campania General de Tabacos de Filipinas citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within — days from the date thereof.

Now, the condition of the above obligation is such, That if the said Miguel Tupino *et al.* shall prosecute said writ of error to effect and answer all costs if they fail to make their plea good then the above obligation to be void; else to remain in full force and virtue.

(Signed) MIGUEL TUPINO,
By JOHN C. GETTING, *Att'y.*
(Signed) AMERICAN BONDING COMPANY OF BALTIMORE,
By THOS. J. L. LASHMUTT,
Attorney-in-Fact.

Sealed and delivered in presence of
(Signed) ALBERT W. WILLETT.

Approved by:—
JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States

416 In the Supreme Court of the United States.

No. —.

MIGUEL TUPINO ET AL., Petitioners,
vs.
LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Sociedad Anonima.

Petition for Writ of Error.

To the Supreme Court of the United States, and to the Honorable Chief Justice and Associate Justices thereof:

Your petitioners, Dionisio Respicio, Juan Fernando, Doroteo Mabajja, Gabriel Cuntapay, Pascual Ragagin, Zacarias de la Cruz, Platon de la Cruz, Agustin Dorone, Emeterio Respicio, Carlos Calimag, Fabian Careaga, Urbano Agcacili, Teofilo Aleriano, Vicente Santiago, Potenciana Lucas, Maximino Galabay, Regino Ramones, Honorio Grisologo, Moises Aguinaldo, Bartolome Guitang, Eduardo Domingo, Gabino Domingo, Francisco Bautista, Nicolas Lucas, Mariano Narciso, Apolinario Lucas, Baldomero Gaspar, Leandro Gaspar, Leon Galabay, Sabas Cristobal, Crispulo Cristobal, Marcelo Cristobal, Felix Ricardo, Tiburcio Juguib, Felix Asio, Clemente Batara, Cesareo Gerardo, Melecio Tubias, Luis Sagabsen, Juan Baliti, Silverio Vidal, Teofilo Subia, Ventura Robles, Victor Mendoza, Teodoro Vidal, Gelasio Valdes, Eulogio Carnate, Santiago Daguio, Ramon Barut, Santiago Mendoza, Julio Arce, Melecio Gallon, Clemente Baquiran, Urbano Lubo, Genaro Domingo, Daminao Cacal, Pedro Madariaga, Miguel Tupino, Eulalio Eugenio, Justo Eugenio, Agustin Lafuente, Juan Labuguen, Nicolas Agoanas, Prospero Basilio, Arcadio Tubias, Emiliano Bayaca, Ubaldo
417 Tanguilan, Engenio Guzman, Eugenio Apostol, Francisco Ortega, Justo Allam, Vicente Calimag, Roman Ramos, Miguel Medina, Lazaro Almazan, Matias Valdes, Ubaldo Batara, Gentura Respicio, Lorenza Padilla, Alejandro Calimag, Esteban Corpus, Esteban Marcos, Hipolito Ramos, Luis Guzman, respectfully state as follows:

1. That they are all residents of the Province of Isabela, Island of Luzon, Philippine Islands.

2. That the Compania General de Tabacos de Filipinas, a merchantile corporation, domiciled in Barcelono, Spain, with a branch office in the Province of Isabela, and represented by one, Don Miguel Macias y Toro, brought a civil action, in the nature of an action of ejectment, against your eighty-four petitioners in the Court of First Instance of the Province of Isabela, for the purpose, among other things, of recovering possession of certain parts of a tract of land called the "Hacienda de San Luis y la Concepcion," which plaintiff company alleged itself to be the owner, but then in possession of the defendants, your eighty-four petitioners. Each of the defend-

ants filed a separate answer (all being in identically the same form) controverting the boundaries as set forth in the complaint and denying the ownership of the plaintiff in and to the land in controversy.

The following judgment was rendered by the Court of First Instance in favor of the plaintiff:

"First. That the Compania General de Tabacos de Filipinas shall be restored by the sheriff or by any of his deputies to the possession of the hacienda San Luis y la Concepcion, by giving possession thereof to D. Miguel Macias y Toro or any other person lawfully representing the said Company. Second. That judgment go against the defendants Esteban Marcos, Ubaldo Batara and Lazaro Almazan by default. Third. That both the present defendants as well as those declared in default, be required to immediately
418 vacate the said hacienda or be evicted therefrom, together with their houses and warehouses. Fourth. That the preliminary injunction issued on the 15th of November last and modified on the third instant be regarded as perpetual from this date and the injunction bond of $10,000 given is to be canceled after the proper legal formalities. The tobacco in the hands of the receiver will be delivered to the Campania General and the bond given by the receiver, canceled, after rendition by him of the accounts of his receivership. Fifth and last. That the defendants present and those in default pay the costs and damages in the sum of nine thousand Mexican pesos, and finally, that the said defendants are enjoined absolutely from performing any act hereafter tending in the slighest degree to disturb the possession of the Campania General of the lands comprised within the hacienda of San Luis y la Concepcion. So ordered.—Ilagan-December 24, 1902 Isidro Paredes—Judge of First Instance."

Your petitioners appealed to the Supreme Court of the Philippine Islands where the judgment of the Court of the First Instance was affirmed by a divided court, Judges Cooper and McDonough dissenting, which dissenting opinions will be found in Transcript Record (pages 74-83 inclusively).

3. In the Court of First Instance the plaintiff to prove its title to the land in question offered in evidence seven grants of public land from the Royal Treasury in the year 1882 to certain individuals through whom it claimed title by mesne conveyances. Each of these grants from the government contained the following provision:

"I issue this title, so that by virtue thereof the (grantee) may be declared the lawful owner of the said land. The title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabela de Luzon, *under pain of nullity* if the contrary is
419 done, so that it may be entered in that government and possession may be given in the usual legal form."

At the trial the defendants made objection to the receiving of these several grants in evidence on the ground that they were null for the reason that they were never presented to the politico-military

government of Isabela de Luzon; that they were not entered in that government; and that possession was not given to the grantees in the usual legal form, all of said conditions in said grants being conditions precedent, and by reason of the failure of the several grantees to comply with the aforesaid conditions and requirements they did not acquire a valid title, and it was incumbent upon the plaintiff to prove a valid title in itself; otherwise the defendants were entitled to judgment.

It is conceded in the record that no survey of the land was made by the government: that the grantees were not placed in possession in the usual legal form; and that the grants were not presented to the politico-military government of Isabela de Luzon for entry.

Other questions of grave importance raised in the Court of First Instance are in dispute, particularly the question of boundaries. (Assignment of errors filed herewith.)

4. A petition for a re-hearing was filed by the defendants in the Supreme Court of the Philippine Islands (Transcript of Record Pages 84-87), which was over-ruled and judgment entered on April 29, 1905, affirming the judgment and sentence of the court of first instance.

On the 1st of May, 1905, defendants petitioned said court for allowance for an appeal to the Supreme Court of the United States (Transcript of Record, pages 95-6); and said court after consideration of petition and affidavits filed in connection therewith,
420 on the 3d of July, 1905, found as a fact that the amount in controversy exceeded the sum of Twenty-five thousand dollars ($25,000.00) United States currency, and granted an appeal to the Supreme Court of the United States, and ordered a translation in the English language by the appellant (your petitioners) of the records, testimony and other proceedings in the case and a certified copy to be submitted to said Supreme Court of the United States of America, and fixed a supercedeas bond of Forty thousand (40,000) Philippine currency (Transcript of Record, p. 99), and the time for the bond having been extended same was approved by the said court on the 6th of December, 1905 (Transcript of Record, p. 104).

Thereafter on the 14th day of January, 1906, your petitioners being in doubt whether their remedy was not by writ of error petitioned said Supreme Court of the Philippine Islands for a writ of error to the Supreme Court of the United (transcript of Record, p. 105), which petition was denied, on the authority of Tupper *vs.* Wise, 110 United States, p. 398, which authority is cited by said Court as ground of refusal. Your petitioners respectfully submit that this case is clearly distinguishable from Tupper *vs.* Wise and falls directly within the distinction as pointed out by this court in the case of Friend *vs.* Wise, 111 U. S. 797. The complaint here is against all of your petitioners; and no designation is made in the complaint of the meets and bounds of the land of which any individual is in possession, *and the judgment and sentence of the court is against all of your petitioners jointly and not individually.*

5. That your petitioners claim the right to remove the said judgment to the Supreme Court of the United States by a writ of error

under the act of July 1, 1902, because of the premises, and because your petitioners are aggrieved by the said judgment, in that
421 by the same and in the proceedings had prior thereto in this cause certain errors (other than those pointed out herein) were committed to the prejudice of your petitioners, all of which will appear more in detail from the assignment of errors submitted with this petition, and from the record of proceedings in this case, a certified copy of which is also submitted herewith.

Wherefore your petitioners pray the allowance of a writ of error to the said Supreme Court of the Philippine Islands, returnable into the Supreme Court of the United States, for the correction of the errors complained of, for citation and bond for costs, and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the said Supreme Court; and they will ever pray, etc.

(Signed) JOHN C. GITTINGS,
Attorney for Petitioners.
J.

Indorsed: Office of the Clerk, Supreme Court, P. I. Received Apr. 3, 1907.

422 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, between Miguel Tupino *et al.*, defendants and appellants, and La Compania General de Tabacos de Filipinas, plaintiff and appellee, a manifest error hath happened, to the great damage of the said Miguel Tupino *et al.* as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 120 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of February, in the year of our Lord one thousand nine hundred and seven.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

423 In the Supreme Court of the United States, October Term, A. D. 1906.

No. —.

MIGUEL TUPINO ET AL., Petitioners,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS, SOCIEDAD ANONIMA.

Assignments of Error.

Come now your petitioners and file the following assignments of error upon which they will rely in the prosecution of the writ of error in the above entitled cause.

1. The Court erred in holding that the following condition found in each of the seven grants from the government, (Plaintiffs' Exhibits 1 to 7 inclusive) viz:

"I issue this title, so that by virtue thereof the (grantee) may be declared the lawful owner of the said land. The title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the politico-military government of Isabel de Luzon, *under pain of nullity* if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form," to be a condition subsequent.

2. The Court erred in affirming the ruling of the trial court in refusing to sustain the defendant's objection to admission in evidence of the seven original grants from the government (Plaintiffs' Exhibits 1 to 7 inclusive) on the grounds that said grants were null for the following reasons, viz: they were never presented to the politico-military government of Isabel de Luzon; and that possession was not given to the grantees in the usual legal form, all of which was a condition precedent. (No survey of the land was made
424 by the government; the grantees were not placed in possession in the usual legal form; and the grants were not presented to the politico-military government of Isabela de Luzon for entry.

(Transcript of Record p. 75.)

3. The Court erred in holding that the plaintiff and his grantors (grantees from the government) were in possession of the land contained in the original grants and have maintained actual or quasi possession of the land.

4. The Court erred in affirming the finding of the trial court that the plaintiff had shown sufficient title to maintain the action of ejectment against the defendants.

5. The court erred in holding that the admission in evidence by the trial court (Plaintiffs' Exhibit 8 and 9 inclusive) was correct.

6. The Court erred in affirming the trial court in its ruling that it would admit all documents which the plaintiff- had to offer in evidence and all the documents the plaintiff- might offer in the future,

at the same time cautioning defendant's counsel to refrain from interrupting witnesses by interposing further objections.

7. The court erred in affirming the ruling of the trial court in admitting Plaintiffs' Exhibit 13.

8. The Court erred in affirming the ruling of the trial court in admitting plaintiffs' exhibit number 14.

9. The Court erred in affirming the trial court in not permitting the following question to be answered by the witness, Manuel Nieto, on cross-examination:

"Are you acquainted with document number 8 and are you familiar with its contents?"

425 10. The court erred in affirming the trial court's denial of the defendant's motion for an order that the records of Cauayan and Angadanan be brought in Court for inspection and examination.

11. The court erred in affirming the trial court in rendering judgment against the defendants.

JOHN C. GETTINGS,
Attorney for Plaintiffs in Error.

426 UNITED STATES OF AMERICA, *ss:*

To La Compania General de Tabacos de Filipinas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 120 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the Philippine Islands wherein Miguel Tupino *et al.* are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Associate Justice of the Supreme Court of the United States, this 16th day of February, in the year of our Lord one thousand nine hundred and seven.

JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

Service of a copy of the within admitted this 3 day of April 1907.

FRAN'CO DOMINGUEZ.

Received copy May 22, 1907.

W. A. KINCAID,
By BURS.

Received copy May 22, '07.

HAUSSERMANN, COHN AND WILLIAMS.

427 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing pages constitute a true and correct transcript of the record and proceedings in the case of Miguel Tupiño *et al.*, plaintiffs in error, *vs.* La Compañia General de Tabacos de Filipinas, defendant in error.

In witness whereof I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this fourteenth day of June, One Thousand Nine Hundred and Seven.

[Seal Court Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court of the Philippine Islands.

E. A.

Endorsed on cover: File No. 20,814. Philippine Islands supreme court. Term No. 411. Miguel Tupiño *et al.*, plaintiffs in error, *vs.* La Compania General de Tabacos de Filipinas. Filed July 24th, 1907. File No. 20,814.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 148.

MIGUEL TUPINO ET AL., Plaintiffs in Error,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

Stipulation.

It is hereby stipulated and agreed that the map attached hereto was left out of the transcript of record by the clerk of the Supreme Court of the Philippine Islands by inadvertence, and is the map referred to by the witness Miguel Macas y Toro as a map, or plan, Exhibit No. 10 (R. p. 16) and offered in evidence by the plaintiff company.

It is further stipulated and agreed that said map shall be printed and treated by the court the same as if it had been included in the transcript of record in this case.

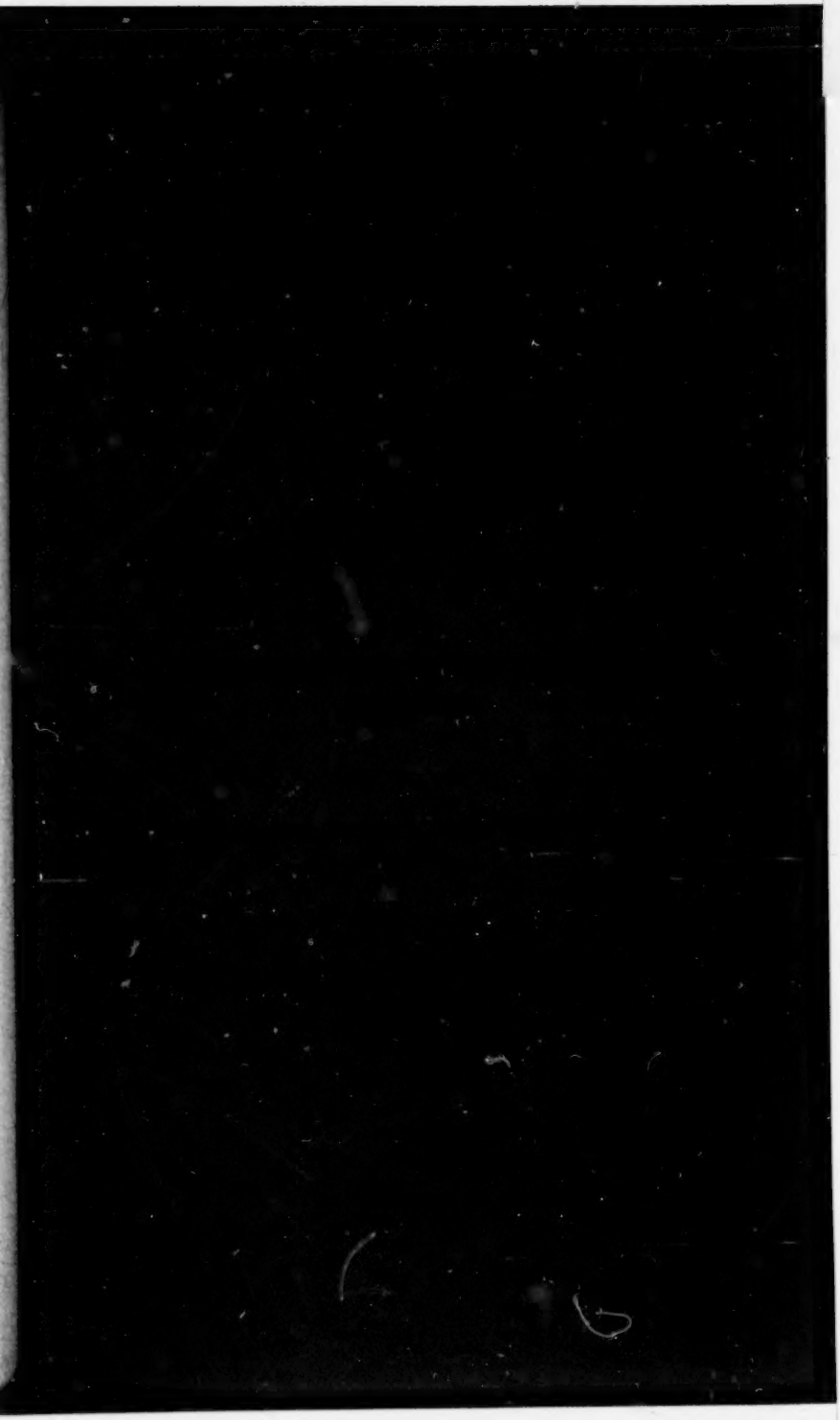
JOHN C. GITTINGS,
Attorneys for Plaintiff- in Error.
ALDIS B. BROWNE,
ALEXANDER BRITTON,
W. A. KINCAID,
Attorneys for Defendant in Error.

[Endorsed:] No. 148. Miguel Tupino *et al. vs.* La Compania General de Tobacos de Filipinas. Stipulation. Gittings & Chamber-

lin, Attorneys and Counsellors at Law, 482 Louisiana Avenue, Washington, D. C.

(Here follows map marked page 3.)

[Endorsed:] File No. 20,814. Supreme Court U. S. October Term, 1908. Term No. 148. Miguel Tupino *et al.*, Pl'ffs in Error, *vs.* La Compania General de Tobacos de Filipinas. Stipulation of counsel & addition to record. Filed Jan'y 25th, 1909.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 411.

MIGUEL TUPINO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

MOTION TO DISMISS.

Now comes the defendant in error, by its counsel, and respectfully moves this honorable court that the writ of error herein be dismissed for the want of jurisdiction.

A. B. BROWNE,
ALEXANDER BRITTON,
Attorneys for Defendant in Error.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 411.

MIGUEL TUPINO ET AL., *Plaintiffs in Error,*

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

Statement.

This is an action brought by defendant in error to recover possession of some eighty-four separate parcels of land separately occupied by plaintiffs in error within the boundaries of the "Hacienda de San Luis y la Concepcion," Province of Isabela de Luzon. The amended complaint (par. 3, R., 7-8) after pleading capacity to sue, recites the general boundaries of the estate and as—

> " having a superficial area of 3,956 hectares, 25 areas
> " and 28 centiareas, which said estate is duly recorded
> " in the public register of this province and was pur-
> " chased by the said Compania General de Tabacos
> " for eighty thousand pesos from Antonio P. Casal,
> " through the latter's executors. The said Casal pur-
> " chased it from its original owners, who acquired it
> " by purchase from the State in 1882 in small par-
> " cels, which having been concentrated in the hands
> " of a single owner the Compania General de Tabacos

"now constitute the said hacienda known as the "'Hacienda de San Luis y la Concepcion.'"

The fourth and fifth paragraphs of the amended complaint aver (R., 8):

"Fourth. That the said Compania General de "Tabacos de Filipinas has, from the year 1883, the "time of the purchase of the land, to the present day, "been in quiet, peaceable and continuous possession "thereof, under claim of ownership, with the sole "exception mentioned in the following parapraph.

"Fifth. That the defendants above named, for "more than one and less than six years ago, illegally "seized and continued to hold certain portions of the "said property of the Compania General de Tabacos "de Filipinas, which said portions, together, have "a superficial area of four hundred and forty-six "hectareas, seventy-nine areas and four centiareas as "to the fields, and four hectareas, approximately, as "to the lots on which their houses and warehouses "are built, distributed among distinct and separate "parcels, but all within the perimeter of the said "estate above described, and for a better understand-"ing thereof, the following statement is given of the "parcels held by each one of the defendants."

Then follows the name of each separate defendant and statement of the area or lot respectively held in possession by each.

The amended complaint then concludes (R., 12-13):

"Eighth. He prays for judgment in favor of the "Compania General de Tabacos de Filipinas for the "possession of the said portions of the 'Hacienda de "'San Luis y la Concepcion,' which is exclusively its "property, and that the proper officers be directed to "restore the said company, through its agent, Miguel "Marcias y Toro, to the possession of the various par-"cels of the said estate above indicated, after the "eviction or expulsion therefrom of all the defend-"ants, including the houses and warehouses which "they have erected thereon, and that they be abso-

"lutely enjoined from thereafter disturbing the said "Compania General de Tabacos de Filipinas in its "possession, and to pay, furthermore, the sum of "nine thousand Mexican pesos to the said company "for damages, and to pay, also the costs of the suit."

The defendants answered separately. The answer of Miguel Tupino only appears in the transcript (R., 13-14), but the petition for writ of error to this court (R., 227) expressly states that "each of the defendants filed a separate "answer (all being in identically the same form). * * *

The answer of Tupino denied the boundaries and extent of the Hacienda as set forth in the complaint, and then averred:

"5. Denies that the said plaintiff company has a "title duly recorded in the property register of the "province of Isabela to the portions of the land described in paragraph 5 of the complaint, as possessed by the defendant.

"6. Denies that the portions of land described in "article 5 of the complaint as held by the defendant "form any part of the said 'Hacienda de San Luis y "'la Concepcion' or that they at any time formed part "thereof, or that they are situated within the boundaries thereof.

"7. Denies that the plaintiff company is the owner "of the portions of land described in paragraph 5 of "the complaint as possessed by the defendant, or "any part thereof, or that the plaintiff company at "any time occupied or possessed them, in whole or "in part, or that it has ever been entitled to the possession thereof, at any time or in any manner.

"8. Denies that the plaintiff company has any interest in the said portions of land described in paragraph 5 of the complaint as possessed by the defendant, or that the company has had any interest "in them at any time.

"9. Denies that the said portions of land described "in paragraph 5 of the complaint as possessed by the "defendant have been unlawfully withheld from the "plaintiff company by the defendant.

"10. Denies that the plaintiff company has suf-
"fered damages by reason of the detention of the
"said portions of land by the defendant in the sum
"of nine thousand pesos or in any other sum what-
"soever."

It will be noted that no *title* adverse to the plaintiff is asserted in any form.

Upon trial, decision and judgment was rendered for the plaintiff company against all the defendants with order for restoration of possession (R., 120-127), and on appeal this judgment was affirmed in the Supreme Court of the islands (R., 204). Opinions (R., 172-193); dissenting opinion (R., 193-197).

Writ of error has been here allowed upon *ex parte* affidavits that the separate parcels claimed by each defendant AGGREGATE in value over $25,000—the jurisdictional sum required (R., 209-211)—although affidavits of such aggregate value submitted by defendant in error (R., 206-208) show the contrary.

The separate and small holding of each defendant does not approximate $25,000 in value. The affidavit of Ramon Pertierra, submitted in support of this motion to dismiss and appended hereto, sets forth the separate holding of each defendant and its value. As the plaintiffs in error aggregate their separate holdings, in attempting to show jurisdictional value, it is hence plain that the separate holding of each cannot reach such amount.

ARGUMENT.

Petition for writ of error to this court was originally denied by a justice of the court below, the order stating (R., 223):

"Applying the doctrine laid down in the case of
"Edwin H. Warner *vs.* Seven Hundred and Seventy-
"one Opositores, decided by the Supreme Court of
"the Philippine Islands November 18, 1905, follow-

"ing Tupper *v.* Wise, 110 U. S., 398, the petition "should be and is hereby denied."

In the case first above cited (5 Phil., 330) the court said:

"Each one of the 771 appellants filed a separate "answer in the court below, in which he claimed "ownership of a certain tract of land. No one of "the appellants has or claims any interest in the "tracts of land claimed by the other appellants. "Under these circumstances no one of them has a "right to remove the case to the Supreme Court of "the United States unless the tract of land of which "he claims to be the owner exceeds in value $25,000 "in money of the United States. The fact that all of "the different tracts of land claimed by the different "appellants exceed in value that sum does not give "them the right to such removal (*Tupper v. Wise,* "110 U. S., 398)."

In *Tupper v. Wise, supra,* the opinion of the court is as follows:

"This was a suit brought by Wise, the defendant "in error, against the plaintiffs in error and others "to recover the possession of sec. 21, T. 3 N., R. 8 E., "Mount Diablo base and meridian, containing 640 "acres of land. Tupper answered, denying that he "was in possession of any part of the section except "the N. E. ¼, and to that he set up a pre-emption "claim and settlement. Lenfesty made the same an- "swer and claim as to the S. E. ¼. There was no "joint ownership or joint possession. Each defend- "ant claimed a separate and distinct interest in a "separate and distinct part of the land. The jury "found that the 'defendants were each severally in "'the wrongful possession of the lands respectively "'described in their several answers and no others, "'and that the value of the rents and profits of the "'lands so held and possessed by defendant Tupper "'is $100, of the land so held and possessed by de- "'fendant Lenfesty $100, and that the value of each "'one of said tracts of 160 acres is $3,000, and of the "'two of them $6,000.' Judgment was thereupon

"rendered against Tupper for the possession of his "tract and $100 damages, and against Lenfesty in "the same way. Tupper and Lenfesty then sued out "this writ of error, which Wise moves to dismiss, be- "cause the claims of the several plaintiffs in error "are separate and distinct, and the value of the mat- "ter in dispute with either of them does not exceed "$5,000.

"This motion is granted. The rule is well settled "that distinct judgments in favor of or against dis- "tinct parties, though in the same record, cannot be "joined to give this court jurisdiction. The whole "subject was fully considered at the last term in *ex* "*parte Baltimore & Ohio Railroad Company,* 106 "U. S., 5; *Farmers' Loan & Trust Company v.* "*Waterman, Id.,* 265; *Adams v. Crittenden, Id.,* 576; "*Schwed v. Smith, Id.,* 188. The stipulation as to "the value of the property which is found in the "record cannot alter the case, for it states that the "aggregate value of the two quarter sections exceeds "$5,100, and the verdict fixes the value of each quar- "ter at $3,000."

In the petition for the present writ of error to this court, which was subsequently allowed the *sole* authority cited is the later decision of this court in *Friend v. Wise,* 111 U. S., 797. We quote that opinion:

"These motions are denied. The value of the two "sections of land which are in dispute is conceded to "be more than $5,000. The complaint alleges a "joint entry and ouster, and the answer does not set "up separate claims to distinct parcels of the land "by the several defendants. The judgment for the "recovery of the possession is against all the defend- "ants jointly. In this respect the case is entirely "different from those of *Tupper v. Wise* and *Lynch* "*v. Bailey,* 110 U. S., 398. We have jurisdiction "therefore."

The facts of present record clearly show that these plaintiffs in error stand in the precise attitude of the defendants

in *Tupper v. Wise, supra,* and *Warner v. 771 Opositores, supra,* in respect of the pending writ.

1. Each filed answer claiming possession of a separate and certain tract as "described" in the complaint.

2. No one of them has or claims any interest in the tracts of land claimed by the others.

3. There is no claim of joint ownership or joint possession.

4. The prayer of present complaint is for judgment "for the possession of the said portions of the Hacienda de San Luis y la Concepcion," * * * and "that the proper "officers be directed to restore the said company, through its "agent, Miguel Marcias y Toro, to the possession *of the "various parcels of the said estate above indicated."* * * *

The case at bar is clearly distinguishable from *Friend v. Wise, supra.*

1. In that case the complaint alleged "a joint entry and ouster."

Here the complaint (R., 8) contains no such allegation, but the direct contrary; and this is confirmed also by the finding and judgment of the trial court (R., 125-126), *inter alia,* thus:

> "Fifth and last. Can the defendants rely upon the "statute of limitations as a defense to the action "brought by the plaintiff? By no means as to any "of them. The greater part of them have not been "in possession for ten years, and those who claim "that they have been in possession for more than "ten years but for less than thirty years, even if this "possession be true, have not been possessors in good "faith or with a just title. Nor has the possession "even been continuous."

This demonstrates that there was in fact no "joint entry and ouster."

2. In *Friend v. Wise* the opinion recites that the answer does not set up separate claim to "distinct parcels of land," but here the separate answer of each defendant does relate to the portions of the land "as possessed by the defendant" or "as held by the defendant" and "as described in paragraph 5 of the complaint" (R., 13-14).

3. In *Friend v. Wise* the statement is that "the judgment for the recovery of the possession is against all the defendants jointly." But the court plainly regards the elements (1) of a complaint alleging joint entry and ouster, (2) the failure of the answer to set up separate claims to distinct parcels, and (3) judgment against all the defendants jointly as concurrent conditions which made the case entirely different from that of *Tupper v. Wise,* wherein, as shown, the complaint, answer, and resulting judgment was in legal effect wholly separate as to each defendant. That is precisely the situation and legal effect in the present case. The judgment *operates* in exact accord with the allegations of separate holdings and the prayer of the complaint is for restoration "of the various parcels of the said estate above indicated." The answer of each defendant is directed "to the portions of the land *described*" in paragraph 5 of the complaint, as "possessed by the defendant."

Upon such pleading and admission it is submitted judgment describing each parcel by metes and bounds cannot be justly required to make this case a separate demand against each defendant for possession of the land as "described" in the complaint and admitted as so "described" in the separate answer of each defendant. Such description was hence sufficient for pleading, issue, trial, and judgment. That the plaintiff claimed ownership of all the several tracts, and that the defendants possessed or held separate

parcels each for himself and without suggestion or claim of common possession or claim, is obvious. In other words, the defendants separately claimed against a plaintiff asserting title against them all. Judgment for plaintiff was hence in legal effect separate as to each defendant and operated to the extent of his several possession. It is these many, but separate, distinct possessions of small areas which on principle and authority *supra* we submit cannot be *united* to create jurisdictional value here. The applicable rule is again clearly stated in *Russell v. Stansell,* 105 U. S., 303, and as well expressed in the syllabus thus:

> " Where the land within a particular district was
> " assessed for taxation, each owner being liable only
> " for the amount wherewith he was separately
> " charged, and the bill of complaint, filed by a num-
> " ber of them, praying for an injunction against the
> " collection of the assessment, was dismissed, and
> " they appealed here—*held,* that the several amounts
> " cannot be united to make up the sum necessary to
> " give this court jurisdiction."

So, here, the separate demand for recovery of possession under the complaint is clearly stated therein, in respect of the several parcels described. It is met by the separate answer of each defendant. They here seek to unite their several interests (and in no sense joint) to create the necessary jurisdictional value.

As value is the sole ground of possible jurisdiction, we submit it must fail and the writ of error accordingly dismissed.

Respectfully submitted,

ALDIS B. BROWNE,
ALEXANDER BRITTON,
Attorneys for Defendant in Error.

APPENDIX.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

MIGUEL TUPIÑO ET AL., *Plaintiff in Error,*

vs.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, *Defendant in Error.*

AFFIDAVIT AS TO AMOUNT IN CONTROVERSY.

The following statement shows the quantity and value of the land comprised in the parcel claimed by each plaintiff in error in the above-entitled cause, together with the value of the improvements thereon and the value of the annual product of each of said parcels set opposite the name of the plaintiff in error to which it corresponds:

	Area.	Value of the land and improvements.	Value of annual product.	Total.
Dionisio Respicio.....	10 hect. 6 a.	1.150	300	P. 1.450
Juan Fernando.....	5 a.	100	.....	" 100
Doroteo Mabajja.....	2 " 4 "	300	60	" 360
Gabriel Cuntapay.....	45 "	100	15	" 115
Pascual Tagagin.....	4 " 54 "	550	120	" 670
Zacarias de la Cruz.....	3 " 55 "	500	100	" 600
Platon de la Cruz.....	4 "	60	.....	" 60
Augustin Dorone.....	7 " 25 "	650	130	" 780
Emeterio Respicio.....	3 " 14 "	300	60	" 360
Carlos Camilag.....	8 " 17 "	1.000	250	" 1.250
Fabian Careaga.....	30 " 5 "	2.000	500	" 2.500
Urbano Agcaoili.....	4 "	60	.....	" 60
Teófilo Aleriano.....	1 " 39 "	200	40	" 240
Vicente Santiago.....	2 "	150	30	" 180

	Area.	Value of the land and improvements.	Value of annual product.	Total.
Potenciana Lucas	6 hect. 4 a.	500	120	P. 620
Maximino Galabay	54 "	150	20	" 170
Regino Ramones	3 " 5 "	400	90	" 490
Honorio Crisologo	1 " 54 "	250	40	" 290
Moises Aguinaldo	3 " 5 "	400	90	" 490
Bartolomé Guitang	4 " 30 "	500	120	" 620
Eduardo Domingo	12 " 97 "	1.200	300	" 1.500
Gabino Domingo	4 " 53 "	450	120	" 570
Francisco Bautista	5 " 54 "	650	120	" 770
Nicolas Lucas	8 " 13 "	800	200	" 1.000
Mariano Narciso	18 " 5 "	1.300	300	" 1.600
Apolinario Lucas	7 " 73 "	800	200	" 1.000
Baldomero Gaspar	3 " 79 "	500	100	" 600
Leandro Gaspar	3 " 53 "	450	100	" 500
Leon Galabay	4 " 5 "	500	120	" 620
Sabas Cristobal	1 " 5 "	150	30	" 180
Crispulo Cristobal	6 " 4 "	500	120	" 620
Marcelo Cristobal	2 " 18 "	300	60	" 360
Felix Ricardo	49 "	100	15	" 115
Tiburcio Juguib	6 " 5 "	500	100	" 600
Felix Asio	54 "	100	15	" 115
Clemente Batara	7 " 5 "	800	120	" 920
Cesáreo Gerardo	1 " 85 "	300	60	" 360
Melesio Tubias	9 " 4 "	600	120	" 720
Luis Sagabaen	2 " 4 "	300	60	" 360
Juan Baliti	1 " 65 "	200	40	" 240
Silverio Vidal	1 " 85 "	300	50	" 350
Teófilo Subia	1 " 24 "	200	35	" 235
Ventura Robles	10 " 85 "	900	150	" 1.050
Victor Mendoza	13 " 3 "	1.000	250	" 1.250
Teodoro Vidal	8 " 63 "	600	120	" 720
Gelasio Valdes	9 " 68 "	700	120	" 820
Eulogio Carnate	3 "	400	90	" 490
Santiago Daguio	20 " 50 "	800	150	" 950
Ramon Barut	64 "	150	15	" 165
Santiago Mendoza	10 " 47 "	900	200	" 1.100
Julio Arce	11 " 52 "	300	60	" 360
Melecio Gallen	3 " 61 "	1.000	240	" 1.240
Clemente Baquiran	4 " 38 "	600	150	" 750
Urbano Lubo	5 " 34 "	500	100	" 600
Genaro Domingo	2 " 2 "	300	60	" 360
Damiano Cacal	9 " 61 "	700	150	" 850
Pedro Madariaga	3 " 43 "	400	90	" 490
Miguel Tupiño	6 " 81 "	700	120	" 820
Eulalio Eugenio	4 "	100	.....	" 100
Justo Eugenio	9 " 4 "	700	160	" 860
Agustin Lafuente	9 " 35 "	800	150	" 950
Juan Labuguen	16 " 79 "	1.000	300	" 1.300
Nicolas Agcanas	2 " 4 "	300	60	" 360

	Area.	Value of the land and improvements.	Value of annual product.	Total.
Próspero Basilio	16 hect. 4 a.	1.000	300	P. 1.300
Arcadio Tubias	15 " 4 "	1.000	300	" 1.300
Emiliano Bayaca	1 " 24 "	150	30	" 180
Ubaldo Tangilan	4 " 4 "	400	90	" 490
Eugenio Guzman	3 " 54 "	400	90	" 490
Eugenio Apostol	4 " 4 "	400	90	" 490
Francisco Ortega	79 "	150	25	" 175
Justo Allam	6 " 4 "	600	120	" 720
Vicente Calimag	1 " 4 "	200	30	" 230
Roman Ramos	8 " 4 "	700	160	" 860
Miguel Medina	6 " 4 "	600	120	" 820
Bazaro Almazan	4 " 4 "	400	90	" 490
Matias Valdes	4 " 55 "	450	100	" 550
Ubaldo Batara	79 "	150	25	" 175
Ventura Respicio	4 "	60	.....	" 60
Lorenzo Padilla	82 "	150	25	" 175
Alejandro Calimag	2 " 5 "	300	60	" 360
Esteban Corpus	1 " 80 "	350	50	" 400
Esteban Marcos	2 " 54 "	350	70	" 420
Hipólito Ramos	2 " 5 "	300	60	" 360
Luis Guzman	4 "	60	.....	" 60

In those cases in which no value is assigned for the product the land is non-productive.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila.

Before me, Geo. N. Hurd, a notary public in and for the city of Manila, Philippine Islands, on this day personally appeared Ramón Pertierra, who being first duly sworn on his oath deposes and says: That he has read the foregoing statement of the quantity and value of the different parcels of land claimed by the plaintiffs in error in the above-entitled cause, together with the improvements thereon and the value of the annual product of each parcel; that he is familiar with the facts related and the subject-matter thereof,

and that said statement is in all material respects true and correct.

RAMON PERTIERRA.

Sworn and subscribed to before me by said Ramon Pertierra this the 4th day of November, A. D. 1907.

[Seal Geo. N. Hurd, Notario Publico, Manila, Islas Filipinas.]

GEO. N. HURD,
Notary Public.

My commission expires December 31, 1908.

Office Supreme Court, U. S.
FILED.
MAR 7 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 148.

MIGUEL TUPINO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF OF PLAINTIFFS IN ERROR IN OPPOSITION TO MOTION TO DISMISS.

JOHN C. GITTINGS,
WM. STEELE GREY,
Attorneys for Plaintiffs in Error.

JUSTIN M. CHAMBERLIN,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 411.

MIGUEL TUPINO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF OF PLAINTIFFS IN ERROR IN OPPOSITION TO MOTION TO DISMISS.

Preliminary Statement.

A writ of error was granted in this case upon the statement by the plaintiffs in error, in their petition, that this case fell directly within this court's ruling in Friend *vs.* Wise, 111 U. S., 797, where Mr. Chief Justice Waite, speaking for the court, said:

> "*These motions are denied.* The value of the two sections of land which are in dispute is conceded to be more than $5,000. *The complaint alleges a joint entry and ouster, and the answer does not set up separate claims to distinct parcels of the land by the several defendants. The judgment for the recovery*

of the possession is against all the defendants jointly. In this respect the case is entirely different from those of Tupper *vs.* Wise and Lynch *vs.* Bailey. We have jurisdiction, therefore."

The defendant in error has moved to dismiss the writ, and urges as a ground for so doing that the case does not come within the ruling in Friend *vs.* Wise, *supra,* but is on all fours with the case of Tupper *vs.* Wise, 110 U. S., 378.

In *Tupper vs. Wise, supra,* the opinion of the court was also delivered by Mr. Chief Justice Waite and is as follows:

"This was a suit brought by Wise, the defendant "in error, against the plaintiffs in error and others "to recover the possession of sec. 21, T. 3 N., R. 8 E., "Mount Diablo base and meridian, containing 640 "acres of land. *Tupper answered, denying that he "was in possession of any part of the section except "the N. E. ¼, and to that he set up a pre-emption "claim and settlement. Lenfesty made the same an-"swer and claim as to the S. E. ¼. There was no "joint ownership or joint possession. Each defend-"ant claimed a separate and distinct interest in a "separate and distinct part of the land.* The jury "found that the 'defendants were each severally in "'the wrongful possession of the lands respectively "'described in their several answers and no others, "'and that the value of the rents and profits of the "'lands so held and possessed by defendant Tupper "'is $100, of the land so held and possessed by de-"'fendant Lenfesty $100, and that the value of each "'one of said tracts of 160 acres is $3,000, and of the "'two of them $6,000.' *Judgment was thereupon "rendered against Tupper for the possession of his "tract and $100 damages, and against Lenfesty in "the same way.* Tupper and Lenfesty then sued out "this writ of error, which Wise moves to dismiss, be-"cause the claims of the several plaintiffs in error "are separate and distinct, and the value of the mat-"ter in dispute with either of them does not exceed "$5,000.

"This motion is granted. The rule is well settled

> " that *distinct judgments* in favor of or against *dis-*
> " *tinct parties,* though in the same record, cannot be
> " joined to give this court jurisdiction."

To ascertain whether we are right or wrong, it therefore becomes necessary to see what is the subject-matter of the suit.

This is in substance an action of ejectment, and in fact has been so determined by the Supreme Court of the Philippine Islands (see Mr. Justice Johnson's opinion, Record, p. 192, and Mr. Justice McDonough's dissenting opinion, Record, p. 193); consequently, to ascertain what is the subject-matter in dispute, it becomes necessary to look at the pleadings and judgment.

"THE COMPLAINTS ALLEGE A JOINT ENTRY AND OUSTER" AND PRAY FOR A JOINT JUDGMENT.

The parts of the original complaint material to this motion are as follows:

> "Third. That the defendants above named have for the last five years, approximately, been illegally holding various portions of the said estate, which together amount to some hundred hectareas, more or less, distributed among as many distinct and separate parcels, but all included within the perimeter of the said estate.
>
> "Fourth. That the plaintiff has suffered damages in the sum of nine thousand three hundred pesos, Mexican currency, by reason of the unlawful detention of the said portion of the estate by the defendants above named.
>
> "Fifth. That the attempts of the representatives of the company to induce the defendants to vacate the land they occupy without suit has been unsuccessful.
>
> "Sixth. Therefore the plaintiff prays for judgment in favor of the Compania General de Tabacos de Filipinas for the said portions of the estate in question, and that it be directed that the proper officer restore the said company, and in its representa-

tion, the undersigned, *to the possession of the said estate, after an eviction or expulsion from the same of all the defendants, and that judgment be also rendered against the latter in the sum of nine thousand three hundred Mexican pesos*, and that it be adjudged that the defendants pay the costs of the suit" (R., pp. 6 and 7).

The amended complaint, after reciting the company's incorporation and a description, with metes and bounds, of the property comprising the "Hacienda," then goes on to recite that from the year 1883 to the present date it has been in quiet and peaceful possession thereof, under a claim of ownership, with the sole exception mentioned in the following paragraph:

> "Fifth. That the defendant [defendants] above named, for more than one year and less than six years ago, illegally seized and continued to hold certain portions of the said property of the Compania General de Tabacos de Filipinas, **which said portions together have a superficial area of four hundred and forty-six hectareas, seventy-nine areas and four centiareas as to the fields, and four hectareas, approximately, as to the lots on which their houses and warehouses are built, distributed among distinct and separate parcels, but all within the perimeter of said estate above described,** and for a better understanding thereof the following statement is given of the parcels held by each one of the defendants:
>
> "Dionicio Respicio holds a lot of six areas, approximately, on which he has erected a house and warehouse, with two parcels of arable land, one of which has an area of nine hectareas and the other of one hectarea" (R., pp. 8 to 12).

Then follows a like statement as to each of the defendants, but nowhere in said paragraph, or in any other paragraph of the amended complaint, is there a description by metes and bounds of any particular portion of land claimed to be

held by any particular individual; nor does it appear in the amended complaint that any one of the defendants claim title in himself, individually, and against the other defendants to any particular portion of any of the land; nor is there any statement anywhere to the effect that they were not and did not claim to be tenants in common. The complaint then proceeds with the sixth paragraph, which is as follows:

> "Sixth. The plaintiff has been damaged in the sum of nine thousand Mexican pesos by reason of the unlawful detention above described.
>
> "Seventh. That the extrajudicial attempts on the part of the representative of the company to induce the defendants to vacate the lands in question have been unavailing; and
>
> "Eighth. He prays for judgment in favor of the Compania General de Tabacos de Filipinas for the possession of the said portions of the 'Hacienda de San Luis y la Concepcion,' which is exclusively its property, and that the proper officers be directed to restore the said company, through its agent, Miguel Macias y Toro *to the possession of the various parcels of the said estate above indicated, after the eviction or expulsion therefrom of all the defendants, including the houses and warehouses which they have erected thereon, and that they be absolutely enjoined from thereafter disturbing the said Compania General de Tabacos de Filipinas in its possession, and to pay, furthermore, the sum of nine thousand Mexican pesos to the said company for damages, and to pay, also, the costs of the suit*" (R., pp. 12-13).

That the complaints do not seek to recover from any individual defendant an individual judgment for a certain portion or part of this tract of land is perfectly manifest upon their face. That the suit is against all of the defendants jointly and in effect does allege a joint entry and ouster also seems to be perfectly plain.

As we have before stated, there is no description by metes and bounds of any particular portion of that part of the "Hacienda" alleged to be in the possession of the defendants

as being in the possession of any particular defendant; and there is no allegation that any particular defendant entered and ousted the plaintiff from possession to any part of the "Hacienda" upon a date different from that of any other defendant. The only allegation is—

> "That the defendants above named for more than 1 year and less than 6 years illegally seized and continued to hold certain portions of the said property."

Can we conclude from such an allegation that the defendants went into possession at different times and held certain portions of the "Hacienda" antagonistic to one another? We hardly think so. If this allegation above referred to is not enough, we submit the prayer to the complaint ought to be conclusive. For example, take the portion which asks for an injunction. It does not pray that the defendants, individually, be enjoined from interfering with any particular portion of the "Hacienda" of which the individual defendant might be in possession, but—

> "That *they* be absolutely enjoined from thereafter disturbing said Compania General de Tabacos de Filipinas in its possession."

Possession of what?

This question can be readily answered by analyzing the two complaints, or even the amended complaint. We find in the fifth paragraph of the amended complaint that the land from which plaintiff claims to have been ousted is a portion of the "Hacienda" containing over *four hundred and forty-six hectareas*. We submit, therefore, the only necessary inference that can be drawn from the complaints in this case is the intention to allege a joint entry and ouster.

The value of the property from which plaintiff claims to have been ousted and which is the subject-matter in dispute, namely, the *four hundred and forty-six hectareas*, the Supreme Court of the Philippine Islands, upon affidavits exhibited by both sides and after a full hearing, determined to

be more than $25,000, United States currency. (See affidavit of MacDougall, R., p. 212, and Mr. Justice Carson's opinion and order, R., p. 216.)

"THE ANSWER DOES NOT SET UP SEPARATE CLAIMS TO DISTINCT PARCELS OF LAND BY THE SEVERAL DEFENDANTS."

The several defendants filed, by and through the same counsel, separate answers, each and every one being in identically the same form, all of which was fully recognized by the court below; consequently only one was allowed to be printed. (See order of Supreme Court of the Philippine Islands, R., p. 166.)

When we examine the answer, it is readily seen that it is in form and substance nothing more nor less than a general denial of plaintiff's title to the land in question.

That portion of the answer that is material to this motion is as follows:

> "5. Denies that the said plaintiff company has a "title, duly recorded in the property register of the "province of Isabela, to the portions of the land described in paragraph 5 of the complaint, as possessed by the defendant.
>
> "6. Denies that the portions of land described in "article 5 of the complaint as held by the defendant "form any part of the said 'Hacienda de San Luis y "'la Concepcion,' or that they at any time formed "part thereof, or that they are situated within the "boundaries thereof.
>
> "7. Denies that the plaintiff company is the owner "of the portions of land described in paragraph 5 of "the complaint as possessed by the defendant, or "any part thereof, or that the plaintiff company at "any time occupied or possessed them, in whole or "in part, or that it has ever been entitled to the possession thereof, at any time or in any manner.
>
> "8. Denies that the plaintiff company has any interest in the said portions of land described in paragraph 5 of the complaint as possessed by the de-

"fendant, or that the company has had any interest "in them at any time.

"9. Denies that the said portions of land described "in paragraph 5 of the complaint as possessed by the "defendant have been unlawfully withheld from the "plaintiff company by the defendant" (R., pp. 13-14).

Here we have no individual claim of title by any individual defendant to any portion of the land in controversy, such as in the case of Tupper *vs.* Wise, *supra*. The defense of each and all of the defendants, as set up in said answer, is a denial of the title of the plaintiff company.

It is true there is no affirmative claim set up in the answers of a joint interest, or joint ownership, or joint possession, for the very apparent reason that there is no claim of any ownership or possession of any particular tract by any particular defendant in any particular answer. In other words, there is no claim of superior title made by the defendants to any particular portion of the land, such as in Tupper *vs.* Wise, *supra*, and in this respect the instant case is identical with the facts in the case of Friend *vs.* Wise.

There the court said:

> "The complaint alleges a joint entry and ouster and the answer does not set up separate claims of distinct parcels of the land by the several defendants."

Notwithstanding such is the state of the record in this case, the defendant in error, on page 9 of its brief, argues that the answer of each defendant does relate to portions of the land "as possessed by the defendant," or "as held by the defendant," or "as described in paragraph 5 of the complaint." This argument, we submit, is unwarranted from anything contained in the answer, for the reason that in every paragraph of the answer where any of the quoted phrases appear it will be seen it is not an assertion of fact that the particular defendant claims to "possess" or "hold" any land whatever, but is simply a denial of the title to or possession of the land,

or portion of the land *described in the complaint, as being in the possession of or held by said defendants.* In other words, said phrases in the answer *are used only as plaintiff's description of the land as set forth in its complaint.*

"THE JUDGMENT FOR THE RECOVERY OF THE POSSESSION IS AGAINST ALL THE DEFENDANTS JOINTLY."

The only other ground alleged by defendant that the instant case falls within Tupper *vs.* Wise, *supra,* is based upon what counsel term "the finding and judgment of the trial court," which is quoted on page 8 of its brief. But when we turn to the record to examine the judgment of the trial court we find that it is not contained upon pages 125 and 126, as quoted in defendants in error's brief, *but upon page 127,* and counsel have evidently confused the opinion of the court, or reasons for its judgment, with the judgment itself. The judgment of the trial court is as follows:

> "Consequently for the reasons stated I decide:
>
> "First. That the Compania General de Tabacos de Filipinas shall be restored by the sheriff, or by his deputies, to the possession of the Hacienda de San Luis y La Concepcion by giving possession thereof to D. Miguel Macias y Toro, or any other person lawfully representing the said company.
>
> "Second. That judgment go against the defendants, Estabab Marcus, Ebanaldo Batara, and Lazaro Almazan, by default.
>
> "Third. That both the present defendants, as well as those declared in default, *be required to immediately vacate the said hacienda, or be evicted therefrom, together with their houses and warehouses.*
>
> "Fourth. That the preliminary injunction issued on the 15th day of November last and modified on the 3rd instant be regarded as perpetual from this date and the injunction bond of $10,000 given is to be canceled after the proper legal formalities. The tobacco in the hands of the receiver will be delivered to the Compania General de Tabacos de Filipinas and

the bond given by the receiver canceled, after rendition by him of his accounts of receivership.

"Fifth, and last. That the defendants present and those in default pay the costs and damages in the sum of nine hundred Mexican pesos; and, finally, that the said defendants are enjoined absolutely from performing any act tending in the slightest degree to disturb the possession of the Compania General de Tabacos de Filipinas to the lands comprised within the Hacienda de San Luis y la Concepcion.

"So ordered" (R., p. 127).

After examination of this judgment, it is clearly manifest that the contention of plaintiffs in error, that this case falls directly within that of Friend *vs.* Wise, *supra*, is correct and the motion to dismiss should overruled.

Respectfully submitted.

JOHN C. GITTINGS,
WM. STEELE GREY,
Attorneys for Plaintiffs in Error.

JUSTIN M. CHAMBERLIN,
Of Counsel.

15

Supreme Court of the United States

OCTOBER TERM, 1908.

Office Supreme Court, U. S.
FILED.
FEB 25 1909
JAMES H. McKENNEY,
CLERK.

No. 148.

MIGUEL TUPIÑO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS SOCIEDAD.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

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LA COMPANIA GENERAL DE TABACOS DE FILIPINAS SOCIEDAD.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Statement of Case.

This is an action of ejectment originating in the Court of First Instance in the Province of Isabella, Island of Luzon, Philippine Islands, brought by the La Compania General de Tabacos de Filipinas Sociedad Anomina against eighty-four defendants, on the 11th of December, 1902, resulting in a judgment for the plaintiff corporation, from which an appeal was taken to the Supreme Court of the Philippine Islands, where the judgment of the trial court was affirmed by a divided court; Judges COOPER and MCDONOUGH dissenting.

Judgment was entered on April 29, 1905. Thereafter, on May 1, 1905, the defendants petitioned that court for

an appeal to the Supreme Court of the United States, and said court, after consideration of the petition, and affidavits filed in connection therewith on July 3, 1905, *found as a fact*, that the amount in controversy exceeded $25,000 United States currency, and granted the appeal, fixing the supersedes bond at $40,000 Philippine currency, which was duly approved on the 6th of December, 1905 (R., p. 216).

Subsequently, on the 14th of January, 1906, defendants being in doubt whether remedy was not by writ of error, petitioned the Supreme Court of the Philippine Islands for a writ of error, which petition was denied on the authority of Tupper *vs.* Wise, 110 U. S., 398 (R., p. 223). Defendants then presented a petition to Mr. Justice McKenna of this court for a writ of error to the Supreme Court of the Philippine Islands, which was duly allowed on the 16th of February, 1907. Thereupon the defendant in error filed a motion to dismiss for want of jurisdiction, but the hearing on same was deferred until the time of argument on the merits, and this case is now here upon a writ of error to the Supreme Court of the Philippine Islands.

Statement of Facts.

The Complaint.

The plaintiff company in its complaint, as amended, averred that it had obtained by purchase in the year 1883 a tract of land in the townships of Cauayan and Angadanan, in the Province of Isabella, of 3956 hectareas, 25 areas and 28 centiareas; that the tract was known as the

"'Hacienda de San Luis y la Concepcion,' bounded on the north by the Rio Grande de Cagayan and by the lands

of Victor Guzman * * * ; on the east by the Cornayan Estero and the public lands; on the south by the public lands and by the Rio Grande de Cagayan; on the northwest by the public lands and by part of the ranchos of Mabantad, Carabatan and Andarayan; on the west, for its whole length, by the Rio Grande de Cagayan."

Plaintiff claimed title to the "Haciendas" through the executor of one Antonio P. Casal, who derived his title to the entire tract from various persons, who in turn had acquired it in small parcels from the Spanish Government in the year 1882; that said estate was duly recorded in public register of the province; and "from the time of the purchase of the land to the present day it had been in quiet, peaceable and continuous possession thereof under claim of ownership with the sole exception mentioned in the following paragraph":

"Fifth. That the defendant (defendants) above named, for more than one year and less than six years ago, illegally seized and continued to hold certain portions of the said property of the Compania General de Tabacos de Filipinas, which said portions together have a superficial area of four hundred and forty-six hectareas, seventy-nine areas and four centiareas as to the fields, and four hectareas, approximately, as to the lots on which their houses and warehouses are built, distributed among distinct and separate parcels, but all within the perimeter of said estate above described, and for a better understanding thereof the following statement is given of the parcels held by each one of the defendants:

"Dionicio Respicio holds a lot of six areas, approximately, on which he has erected a house and warehouse, with two parcels of arable land, one of which has an area of nine hectareas and the other of one hectarea" (R., pp. 8 to 12).

Then follows a like description as to each of the defend-

ants, but nowhere in said paragraph, or in any other paragraph of the amended complaint, is there a description by metes and bounds of any particular portion of land held by any particular defendant; nor any description of the location of the whole of the four hundred and forty-six hectareas, etc.

The complaint prayed for the expulsion of the defendants and that it be put into possession and for 9000 pesos damages.

The several defendants answered separately, but all the answers were alike. (See order of S. C. P. Is. R., p. 166.)

The answers denied that plaintiff company had a title duly recorded; and denied that their lands formed any part of the said Haciendas, or are situated within the boundaries thereof; and denied that plaintiff company ever was in possession, or entitled to possession, of said lands (R., p. 13).

The Evidence.

The trial of the action was begun at Ilagan, December 11th, 1902. Miguel Macias y Toro, the Philippine representative of the plaintiff, was the first witness examined, who, on being asked how he could prove the company owned the lands described in the complaint, said, by the title deeds. Witness then produced what purported to be nine deeds, which were then introduced in evidence (R., p. 14), Exhibits 1 to 9, inclusive (R., pp. 25-63), under objection of the defendants (R., p. 17), Exhibit No. 1 (R., p. 25) is dated October 20th, 1882. It is, or purports to be, a grant from the Spanish Government to one Doroteo Faustino of a parcel of land in the Province of Isabella, consisting of 90 hectareas, 97 areas and 80 centiareas (approximately 225 acres) for the consideration of $200. Faustino conveyed this property for the sum of $201 on

December 5th, 1882, to Casal, whose executor conveyed it to the plaintiff company.

Exhibits Nos. 2, 3, 4. 5, 6 and 7 are likewise grants from the government, and differ only from Exhibit 1 in the names of the grantees, location and description of the land so granted.

In each of said grants there is contained the following condition:

"The title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the Politico-Military Government of Isabella de Luzon *under pain of nullity if the contrary is done*, so that it may be entered in that government and possession may be given in the usual legal form" (R., p. 25).

Each of the exhibits from 1 to 7, inclusive, contains two deeds, one being from the government and the other from the government's grantee to Casal.

Objection was made to the introduction of Exhibits 1 to 7, inclusive:

1. "Because they had not been presented to the Politico-Military Government of Isabella de Luzon and possession was not given the grantees in the usual legal form" (R., p. 1).

2. "Because of the non-performance of the condition prescribed by the deed of the claim, to wit: the recordation thereof in the Central Administration of Government Monopolies."

3. "Because the note of inscription which appears in each one of the documents is not made in compliance with Article 224 of the Mortgage Law."

4. "Because the notes of these titles were not written in the month of April last, when they were presented before this same court" (R., p. 15).

In overruling these objections, the Court held:

"That he should, and would, admit all documents presented by the plaintiff, and such other documents as might thereafter be presented, because the case was open for the taking of testimony, and it was necessary to admit all kinds of evidence, more especially as the documents in question were apparently recorded in due form, and that the grounds of the objection would be taken into consideration in the final result" (R., p. 15).

To this ruling an exception was taken.

None of the seven parcels above referred to was recorded until September 17, 1898, when all of the parcels were registered in the Property Register of Isabella.

Exhibit No. 8 (R., p. 43) is an instrument executed at Manila on the 31st day of October, 1887, before a notary, by Jose Clavet, who appears as the executor of Antonio P. Casal. This instrument, besides conveying the seven parcels in question, purports to convey 53 other parcels in Isabella to the plaintiff company, which had been denounced (petitioned for) to the State by his (Casal's) agents. With these 60 parcels the company formed the Haciendas, San Luis and La Concepcion.

It is also recited in Exhibit 8 that

"The lands comprising both haciendas, measuring together two thousand nine hundred and two hectareas, sixty-one areas and seventy-eight centiareas, bounded on the north by the arable lands of Joaquin de Guzman; on the northwest by the public lands and by the ranchos Mabantad, Carabatan and Grande de Cagayan; on the south by the said river and by public lands; and on the east by the Cornayan Estero and by public lands.

"The situation, boundaries and superficial area of the haciendas in question, as well as the names of the persons who denounced to the State the sixty parcels of which the haciendas are composed, appear in the plan of the said

haciendas, of which plan a copy will be attached to the appendix of my protocol, and another will be attached to the copy of this instrument, so that it may be added to the title deeds of the haciendas, which, as above stated, are in the possession of the Compania" (R., p. 48).

No such plan was attached to the instrument.

The plaintiff endeavored to have these parcels recorded on March 9th, 1895, but their registration was refused by the Register of Isabella, because the title was defective with respect to the personality of the corporation, "being a defect which does not appear to be subject to correction, no preventative annotation can be made thereto" (R., p. 51).

Exhibit 9 is an amplification of Exhibit No. 8, and sets forth that the estate consists of three thousand nine hundred and fifty-six hectareas, twenty-five areas and twenty-eight centiareas, but does not change the boundaries in any way (R., p. 58). Exhibit No. 9 was executed 21 days after Exhibit No. 8.

Objection was also made to the introduction in evidence of Exhibits 8 and 9, because,

1. "The register does not show the essential requisites prescribed by law:

2. "Because they do not describe the boundaries of the haciendas clearly, since in the register itself it appears that the Haciendas of San Luis y la Concepcion are bounded on the north and northwest by the arable lands of Joaquin Guzman, by the ranchos of Mabantad, Carabatan and Andarayan, which are the lands occupied by and in the possession of the defendants" (R., pp. 15 and 16).

The Trial Court ruled:

"That the excepting party must abide by the former

ruling, that this was not a proper time to examine the legal weight and effect of the documents, but simply to determine whether they should be admitted or not; and finally, that he rule that they be admitted" (R., 16).

To this ruling an exception was taken.

In addition to the documents described, the witness then produced Exhibit 10, a map or plan (that does not appear in the record—as it was inadvertently left out by the clerk of the court below, but has been supplemented by stipulation). This map is not a survey by the government; in fact, it is admitted by this witness none was ever made by the government.

This map, although stated by the witness that it refers to Exhibit No. 8, upon examination does not only fail to in any way mention Exhibit 8, but it absolutely contradicts the description of the plan or map referred to in that instrument.

It is a plan showing three thousand nine hundred and fifty-six hectareas, twenty-five areas and twenty centiareas; while in the deed by which the same land was conveyed to the Tobacco Company it is stated that the superficial area of the lands amounts to only two thousand nine hundred and two hectareas, sixty-one areas and seventy-eight centiareas, or a difference of one thousand and fifty-four hectareas, sixty-five areas and fifty centiareas in favor of the company.

It does not appear when or by whom this map was prepared, or whether it was ever attached to the deed of Clavet to the plaintiff company (Exhibit 8), which deed was entered into October 31, 1887 (R., p. 16). This was a survey made by order of the plaintiff company (R., p. 18).

The plaintiff company then offered two documents that evidenced that on April 19th, 1901, the title deeds and

documents relating to the property in question were recorded in the Forestry Bureau, as appears by Exhibit 11 (R., p. 63), and Exhibit 12 (R., p. 64) shows that the plaintiff company paid taxes for the year 1902, but it does not appear on what specific lands the taxes were paid.

To give additional strength to the claim of the plaintiff, Exhibit No. 13 was introduced in evidence. This instrument was executed February 29, 1896, between Manuel Nieto, a representative of the company, and Justo Allam, Eugenio Guzman, Arcadio Tubera and Agustin Lafuente, defendants, and forty-three other persons, who, it recites, had farms on the hacienda, and who are not parties to this action, and purports to be a lease between them and the plaintiff company.

Objection was specifically made to the introduction of this contract, on the ground that it was not alleged, or pleaded, in the complaint, and, therefore, could not be admitted and used to prove a breach of the same in this action, which objection the Court overruled, and admitted the contract in evidence, to which ruling defendants excepted (R., p. 17).

The witness Nieto, referred to in Exhibit No. 13, was called by the plaintiff and testified as follows (R., p. 24):

"Q. Do you know what are the boundaries of this land transferred to the company and known as the Hacienda of San Luis y La Concepcion?

"A. I do not know the boundaries, but the company has documents which would answer the question.

"Q. Is the land referred to in the document No. 8, which you have just recognized, the same, and has it the same boundaries as that which you assisted in surveying?

"A. The document will answer your question.

"Q. Do you recognize document numbered 8, and are you informed of its contents?"

At this point the Court stated "that public documents speak for themselves, and that, therefore, they need no proof."

The attorney for the defendants stated to the Court that the purpose of his question was to determine whether the witness recognizes the document and knew its contents. The Judge replied:

"That the witness is called to testify concerning the contract No. 13, and that his examination should, therefore, be limited to that point. As to whether he does, or not, recognize the document No. 8, this is not a matter upon which he could be interrogated, because he did not present it, and if it is admitted that it speaks for itself, all questions would appear to be unnecessary. I, therefore, rule out the question and ask you for the sake of prompt administration of justice to have the goodness to form your questions less capriciously and make them more pertinent, because it does not appear to be just that a witness called to prove one particular fact should be tortured with questions which are enough to disconcert the most self-possessed of men."

To this ruling exception was duly taken (R., p. 25).

The plaintiff company then called a number of witnesses for the purpose of showing that none of the defendants in this action were occupants of the land in question, excepting the defendants Justo Allam, Arcadio Tubera, Eugenio Guzman and Agustin Lafuente at the time of the execution of Exhibit No. 13. Nearly all of these witnesses were employees of the company. The witness Nieto "knew that there were only those four persons, because I went over the whole hacienda, and if there had been any other tenants it is evident that they would have all signed the contract" (R., p. 23). The testimony of the witnesses Manuel Rodriguez (R., p. 147), Jose Poo (R., p. 144)

and Ignacio Flores (R., p. 69) (all employees of the company) was similar in substance to that given by the witness Nieto. The witness Enrique T. Andrade testified that he did not know how long the individuals who signed document No. 13 had lived at Minanga prior to the year 1896 (R., p. 153).

This completed the plaintiff's case.

The defendants offered evidence to show that their holdings were not within the boundaries of the haciendas known as San Luis and La Concepcion, but were carved out of the ranchos of Minanga and Mabantad, which ranchos had been owned for many years by Joaquin Guzman and Manuel Dalanidao, Minanga being owned by the former and Mabantad by the latter. The witness Dalanidao testified as follows (R., pp. 86, 87, 88):

"Q. How long have you been living at Mabantad?

"A. Since my childhood.

"Q. Do you know D. Joaquin Guzman?

"A. Yes.

"Q. Do you know, more or less, when Joaquin Guzman came to Minanga?

"A. About twenty-five years ago, more or less.

"Q. Can you describe Joaquin Guzman's land with respect to its extent and boundaries?

"A. It is very big; it was bounded on the north with the Cornayan, at the east by the forest, on the south by the forest, and on the west by the River Cagayan.

"Q. Could you make a map of Joaquin Guzman's land and your land for the purpose of pointing out the forest which you refer to as the boundary?

"A. Yes, sir.

(See map between pages 168-169 of Record.)

"Q. Is it true that your Lands adjoin Joaquin Guzman's on the forest which was the boundary?

"A. Yes, sir.

"Q. Do you know how many tenants, more or less, there were on Guzman's land?

"A. There are many according to my calculation, there were from 100 to 110.

"Q. Who gave the name of Minanga to this rancho?

"A. Don Joaquin Guzman.

"Q. Have you ever observed during the last twenty-five years that the Mabantad lands have been surveyed by a surveyor?

"A. No, sir; I did not see anything of the kind.

"Q. Have you ever heard of the existence of an hacienda called 'San Luis and La Concepçion'?

"A. No, sir.

"Q. Do you know if there was a wire fence running through the Mabantad Rancho?

"A. Yes, sir; since August of this year.

"Q. Does this wire fence go over your lands?

"A. Yes, sir; it runs through the middle of my land.

"Q. Do you know who ordered it to be put there?

"A. No, sir.

"Q. Are you satisfied to have this fence there?

"A. No, sir.

"Q. Do you know what was the purpose for which this fence was put up?

"A. No, sir; I do not.

"Q. Isn't it true that many of the people who went to Mabantad and cultivated land asked your permission to do so?

"A. Yes, sir.

"Q. Why did they ask your permission and not that of any other person?

"A. Because I am the head of the rancho, and because all the lands included therein belonged to me.

"Q. How many years is it since your father died?

"A. Twenty years, more or less.

"Q. Was your father the owner of the lands which now belong to you?

"A. Yes, sir.

* * * * *

"Q. Did you have any tenants on your land?

"A. I had a great many; but some of them went away leaving three tributes.

"Q. How many families, more or less, lived on your lands?

"A. One hundred families, or more.

"Q. Do you know if Joaquin Guzman had any tenants?

"A. Yes, sir.

* * * * *

"Q. Can you state how many years ago, more or less, Joaquin Guzman brought them (tenants) from Tuguegarao?

"A. I think it must be about twenty or thirty years."

This witness further said he had never heard of the seven persons who had secured the grants from the government, and who subsequently conveyed the same to Casal, and which grants are the subject matter of Exhibits 1 to 7, inclusive (R., p. 89).

The witness Bruno Dalanidao testified that he lived on the Mabantad Ranch for twenty-five years; he also testified that Joaquin Guzman was the abutting owner on the west with the father of the former witness, Manuel Dalanidao. He had never heard anything about the haciendas called San Luis and La Concepcion (R., p. 90). The witness Justo Allam testified (R., p. 78) that he had lived in Minanga for thirty years. He was first a tenant of Joaquin Guzman. He said Guzman's land was a large tract, and had many tenants on it. The witness Ignacio Malana testified that he had lived on the Minanga Ranch for thirty years and came there with Justo Allam (R., p. 79). The witness Theodoro Balusan testified that he had been in Minanga thirty years and had come there with Justo Allam. He worked for the latter as his tenant, and had been cultivating the same land since that time. His lands and those of Justo Allam were situated within the boundaries of Joaquin Guzman's lands (R., p. 80). Theodoro Vidal (R., p. 81), Dinonicio Respicio (R., p. 82),

Zacarias de la Cruz (R., p. 85), Engracia Maraggun (R., p. 72), Lucas Mendoza (R., p. 71), Fernanda Corciano (R., p. 74) and Nicolas Lacaste (R., p. 75) also testified to the long occupancy that they and their fellow defendants had in the land which is the subject of dispute. The defendants then offered in evidence Document A (R., p. 90), a possessory title in favor of Victor Guzman, and Document B (R., p. 98) and Document C (R., p. 100), transcripts of the entries of inscription of the hacienda in question in the Registry of Property.

On this evidence the Court of First Instance found that the plaintiff company was the owner and possessor of the Hacienda San Luis y la Concepcion, with the situation, superficial area and boundaries described in the complaint, with a duly recorded title in the Registry of the Province of Isabella; and that the defendants are wrongfully withholding possession of parcels within the perimeter.

To this verdict the defendants duly excepted (R., p. 3).

On December 24th, 1902, the following decision was rendered by the Trial Court:

"1st. That the La Compania General de Tabacos de Filipinas shall be restored by the sheriff or any of his deputies to the possession of the Hacienda San Luis y la Concepcion by giving possession thereof to D. Macias y Toro or any other person lawfully representing said company.

"2nd. That judgment go against the defendants Estebab Marcos, Ubaldo Batara and Lazaro Almazan by default.

"3rd. That both the present defendants, as well as those declared in default, be required to immediately vacate the said hacienda, or be evicted therefrom, together with their houses and warehouses.

"4th. That the preliminary injunction issued on the 15th of November last, and modified on the 3rd instant, be re-

garded as perpetual from this date, and the injunction bond of $10,000 given to be cancelled after the proper legal formalities. The tobacco in the hands of the receiver will be delivered to the Compania General, and the bond given by the receiver cancelled, after rendition by him of the accounts of his receivership.

"5th. That the defendants present, and those in default, pay the costs and damages in the sum of nine thousand Mexican pesos, and finally, that the said defendants are enjoined absolutely from performing any act hereafter tending in the slightest degree to disturb the possession by the Compania General of the lands comprised within the Hacienda of San Luis y la Concepcion" (R., p. 127).

Ten days thereafter, the defendants moved for a new trial. This motion was denied (R., pp. 132 and 135). Exceptions were duly taken to the order denying defendants' motion (R., p. 135) and thereafter the defendants appealed from said order to the Supreme Court of the Philippine Islands. The said order was affirmed by a divided court. Chief Justice ARELLANO and Justices TORRES, MAPA and JOHNSON voting for an affirmance, and Mr. Justice MCDONOUGH and Mr. Justice COOPER dissenting (R., pp. 172 to 197).

Assignments of Error.

1. The Court erred in holding the following condition found in each of the seven grants from the government (Plaintiffs' Exhibits 1 to 7, inclusive), viz.:

"I issue this title, so that by virtue thereof the (grantee) may be declared the lawful owner of the said land. The title shall be entered in the Central Administration of Government Monopolies and subsequently presented to the Politico-Military Government of Isabella de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form," to be a condition precedent.

2. The Court erred in affirming the ruling of the Trial Court in refusing to sustain defendant's objection to admission in evidence of the seven original grants from the government (Plaintiff's exhibits 1 to 7, inclusive), on the grounds that said grants were null, for the following reasons, viz.: they were never presented to the Politico-Military Government of Isabella de Luzon; and that possession was not given to the grantees in the usual legal form, all of which was a condition precedent. (No survey of the land was made by the government; the grantees were not placed in possession in the usual legal form; and the grants were not presented to the Politico-Military Government of Isabella de Luzon for entry.)

3. The Court erred in holding that the plaintiff and his grantor (grantees from the government) were in possession of the land contained in the original grants, and have maintained actual or quasi possession of the land.

4. The Court erred in affirming the finding of the Trial Court that the plaintiff had shown sufficient title to maintain the action of ejectment against the defendants.

5. The Court erred in holding that the admission in evidence by the Trial Court (Plaintiff's Exhibits 8 and 9, inclusive) was correct.

6. The Court erred in affirming the Trial Court in its ruling that it would admit all documents which the plaintiff had to offer in evidence and all the documents the plaintiff might offer in the future, at the same time cautioning defendants' counsel to refrain from interrupting witnesses by interposing further objections.

7. The Court erred in affirming the ruling of the Trial Court in admitting Plaintiff's Exhibit 13.

8. The Court erred in affirming the ruling of the Trial Court in admitting plaintiffs' Exhibit No. 14.

9. The Court erred in affirming the Trial Court in not permitting the following question to be answered by the witness, Manuel Nieto, on cross-examination:

"Are you acquainted with document number 8 and are you familiar with its contents?"

10. The Court erred in affirming the Trial Court's denial of the defendants' motion for an order that the records of Cauayan and Angadanan be brought in court for inspection and examination.

11. The Court erred in affirming the Trial Court in rendering judgment against the defendants.

Argument.

FIRST AND SECOND ASSIGNMENTS OF ERROR.

It was claimed by the defendant in error that the superficial area of the Hacienda San Luis y la Concepcion was more than thirty-nine hundred hectareas, which had been made up of sixty separate grants from the government and lay within certain described boundaries.

To prove its ownership and duly registered title there were offered in evidence the seven grants, Exhibits 1 to 7, inclusive. As we have previously stated, each of these exhibits contained two deeds, one from the government to the grantee and the other from the grantee to Casal. All were alike in form and terms, differing only in name of the State grantee, the description and amount of land, and each contained in the grant from the government to the

grantee the following conditions, which we respectfully submit is a condition precedent:

"I issue this title so that by virtue thereof the (grantee) may be declared the lawful owner of said land. This title shall be entered in the Central Administration of Government Monopolies, and subsequently presented to the Politico-Military Government of Isabella de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that government and possession may be given in the usual legal form" (R., p. 25).

Each grant is dated Manila, October 20, 1882, the several grantees having petitioned for the land some time previously. Each grant was entered in the Central Administration of Government Monopolies on the 26th of October, 1882. The second deed in each exhibit is the conveyance of grantee to Casal and is dated at Manila, December 5, 1882. At the foot of each of the second deeds appears the following:

"The parcel to which this instrument refers forms a part of the Hacienda San Luis y la Concepcion inscribed with a single boundary in Volume 1, Canayan 11 of the Archive (fol. 118), lot 75, and Volume 2. Provisional Angadanan 1, of Archive Volume 7, lot 182, both first entries.
"Ilagan, Sept. 17, 1898, Lic. Juan Garcia Roderigo."

Following which is a seal reading "Register of Property of Isabella." To the introduction of these exhibits objection was made by the defendants, because they were not inscribed in the register and because they were prima facie invalid. The objection was overruled and the instruments admitted (R., p. 15).

1st. THE INSTRUMENT WAS NOT DULY RECORDED.

The inscription on these deeds, Exhibits 1 to 7, in-

clusive, we respectfully submit, is not a certificate of its registration such as is prescribed by Article 244 of the Mortgage Law of the Philippine Islands, but apparently an unauthorized memorandum. This memorandum refers to the inscription of the entire hacienda as first entry of lot 75, and first entry of lot 182 of Angadanan. Exhibits 8 and 9 (R., pp. 43 to 63), which were introduced with Exhibits 1 to 7, show by their footnotes that their inscription is the one referred to in the memoranda on Exhibits 1 to 7, for their inscription is at the same folios of the same volumes named in the memoranda of 1 to 7, and as "first entries." Exhibits 8 and 9 were not executed until 1887. If their registration was the "first entry" for these fincas how could the documents executed in 1882 have been registered?

"The entries relating to each estate shall be numbered in their proper order and signed by the Register" (Art. 229, Mortgage Law).

It is obvious that if the footnote in the second deed in each of the seven exhibits was a sufficient certificate of registration, it ought only to apply to the conveyances from Faustino and the others to Casal, and must leave the grants from the State to Faustino and the other six without any proof of inscription whatsoever.

"If the entry or record of several estates or rights has been made, all of which are contained in one instrument, the memorandum made at the foot thereof shall state precisely and laconically what has been done, noting also at the margin of the description of the instrument of each estate or right, its number, folio, book and number of the record or letter of the entry, which has been made regarding the same, without collecting any fees for these statements" (Art. 273, Regulations).

From the foregoing it must be clear that there is no proof whatever of the registration of the grants from the government contained in Exhibits 1 to 7. Therefore, the allegation of the plaintiff of a duly recorded title must fail.

THE INSTRUMENTS ARE PRIMA FACIE INVALID.

It is admitted that the grants were never presented to the Politico-Military Government of Isabella for registration, and the Trial Court finds as a fact that the condition was never performed, but held that the State alone could take advantage of the non-performance. The Court below held the language used created a condition subsequent.

The questions may now be asked, "Did title ever vest in the grantees of the government? Was not the condition under which the grants were made a condition precedent?" If the condition was a condition precedent, plaintiffs must show performance of the condition, for registration and claim of title cannot create a right where no right had ever existed. Plaintiff has not shown title in its grantors, and, therefore, could show no title in itself.

"If it is a condition precedent, the failure to perform will prevent the estate from taking effect. But if it is a condition subsequent, the estate is defeated only at the election of the parties who can take advantage of the breach."

Tiedeman, Real Property, Sec. 277.

It will appear from the following that the distinction and effect between condition precedent and condition subsequent are similar in the Spanish law to the common law of England and the United States.

"Conditions precedent (condiciones suspensivas) prevent the realization of the right until their fulfilment;

while conditions subsequent (condiciones resolutorias), both those which annul (resultorias) and those which rescind (rescisorias), do not prevent the contract or legacy from taking full effect, with the proviso, however, that if the condition be fulfilled all things return to the state in which they were at first. Conditions precedent suspend and prevent the perfection and consummation of the act or of the contract until their fulfillment, and conditions subsequent at the moment of their fulfillment destroy contracts already perfected and consummated."

Galindo Commentaries on the Mortgage Law, 4th Edition, Vol. 1, page 625.

"It is a general principle that a party who sets up a title must furnish the evidence necessary to support it. If the validity of the deed depends on an act in pais, the party claiming under that deed is as much bound to prove the performance of the act as he would be bound to prove any matter of record on which its validity might depend."

Williams *vs.* Peyton's Heirs, 4 Wheat., 76.

Concerning the inscription by a registrar of conditions in a deed, Galindo, the Spanish authority, says:

"The contract executed subject to the condition precedent has been inscribed in the Register and in it appears the eventual right of the grantee, for example, to arise in case of the satisfaction of the condition. Consequently, when the condition is satisfied, it is sufficient merely to make note of it, in order that it may be shown that the grantee has acquired the ownership and the inscription thereupon takes full effect."

Galindo (*supra*), p. 632.

"Neither in the law nor in the regulations is the case foreseen which must frequently arise wherein the condition precedent is not realized. But, if one follows the spirit of Art. 16 of the law, and takes into account, moreover, that because of the condition precedent the right has not arisen and that the grantor has not for one moment ceased

to be the owner, the transfer of ownership not having taken place, although the owner's facilities as such have been restricted, it will be clear that here, also, a marginal note will suffice, for this will practically have the effect of cancelling the inscription, inasmuch as the noting of failure to realize the condition is equivalent to the statement that the obligation does not exist."

Galindo (*supra*), pp. 652-653.

A number of cases have been decided in the Supreme Court of the United States, involving the title to grants upon condition of public lands formerly held by Spain and by Mexico in territory subsequently ceded to the United States, and the non-performance of the conditions. These cases involve the interpretation of the civil law by United States courts, and are in many other respects analogous with the case at bar, that it will be profitable to refer to them.

In United States *vs.* Kingsley, 12 Pet., 215, the facts were these: In 1816 Governor Coppinger of the then Spanish Province of East Florida granted to Kingsley a mill site and a privilege of cutting pine, "under the precise condition, however, that until he builds such mill this grant will be considered null and void." In 1829, after the cession of East Florida to the United States, Kingsley petitioned the District Court that this title to the tract granted by Governor Coppinger might be confirmed to him. The evidence showed that no mill had ever been built, though petitioner gave some excuse for his non-performance.

The District Court gave a decree in favor of the petitioner, and from this decree the United States appealed to this Court. Mr. Justice WAYNE, in his decision, says:

"We view this claim under the decree of Governor Coppinger as a permission to enter upon the land designated

in the petition and decree, in which land the appellee did not and could not acquire property, or even inchoate title, such as is embraced in the 8th article of the treaty, or by the construction of it, until he had, in good faith, prepared to execute the condition which the appellee held out as the inducement to obtain a grant; or, in other words, we think the decree of the Governor contains a condition precedent, to be performed by the appellee before the grant could take effect. In this case the appellee never attempted to perform the condition; there is no proof of his having done so in good faith, by the expenditure of money or application of labor. * * * It is the opinion of this Court that the petitioner, having failed to fulfil the condition of the grant that the said grant or concession is null and void, and that the petitioner has no right or title to the land."

U. S. *vs.* Kingsley (*supra*) is cited and followed in U. S. *vs.* Mills, 12 Pet., 216; U. S. *vs.* Drumond, 13 Pet., 84; U. S. *vs.* Burgevin, 13 Pet., 86, cases similar in fact. Cited and applied in U. S. *vs.* Wiggins, 14 Pet., 350, where grantee not having complied with condition as to improvements, grant was held void; Winter *vs.* U. S., Fed. Cas. 16895, where condition in grant as to locating land by authorized survey was not performed, therefore petition for confirmation of grant was denied; Doe *vs.* Latimer, 2 Fla., 80, where Spanish concession was made on conditions of performance of certain regulations and no steps had been taken to comply therewith at time Florida was ceded to the United States, held, such concession is no evidence of title.

"A Spanish concession of land upon express condition of inhabitation and improvement is no valid foundation for a grant unless there has been a compliance with such conditions."

McMiken *vs.* U. S., 97 U. S., 218.

"A concession by a Spanish Governor which is not followed by the proceedings which his order required, nor a

severance of the land from the royal domain, is invalid and void."

LeCompte *vs.* U. S., 11 How., 127.
U. S. *vs.* King, 3 How., 787.

All the cases cited or quoted above were questions between the claimants and the United States, and in such cases it was the policy of this Court, as repeatedly expressed, to interpret most liberally in favor of grantee, not applying the strict rules of the common law, and accepting reasonable excuses for non-performance of conditions. Where the petitioner made claim to public lands and was able to show some equitable grounds, his title was confirmed to him. But quite a different rule has been applied when the controversy has arisen between two private individuals, one of whom tried under a so-called Spanish land grant to recover lands in the possession of the other; in such a case the Court has followed the general rule of ejectment: "The plaintiff must show valid legal title, not merely an equitable one, to authorize recovery. Where no such title is shown, defendant's possession is sufficient for his protection."

Morehouse *vs.* Phelps, 21 How., 294.
Singleton *vs.* Touchard, 1 Black, 342.

In More *vs.* Steinbach, 127 U. S., 270, it appears that defendants claimed under a Mexican grant to one Jimeno, which grant contains this provision: "He (the grantee) shall petition the proper judge to be put in judicial possession by him in virtue of this document, etc." Jimeno and his successors never performed this condition, and after the United States had acquired the territory by cession from Mexico, plaintiff's grantors obtained title to the tract which had been granted to Jimeno. It was held that the title obtained from Mexico to Jimeno was an imperfect

one on account of failure to perform the conditions; that the lands remained public lands, and that the United States had, therefore, given good title to plaintiff's grantor.

Doe *vs.* Latimer (*supra*).

Even where Mexican and Spanish grants were made upon conditions subsequent, it has been held that failure to perform the conditions within the time fixed, or within a reasonable time, works a forfeiture of the grant, and this without the necessity of reentry or express cancellation.

Buyck *vs. U. S.*, 15 Pet., 215.
McMiken *vs.* U. S. (*supra*).
LeCompte *vs.* U. S. (*supra*).
U. S. *vs.* Moore, 12 How., 209.
O'Hara *vs.* U. S., 15 Pet., 279.

Both Spanish and American authorities support the contention of appellants that if the condition contained in the grants was a condition precedent, plaintiff could show no title without proof of the performance of the condition. It only remains, therefore, to determine the nature of the condition by examining into the intention of the grantor, as shown by the instrument and the circumstances under which it was executed.

"Whether conditions are precedent or subsequent is to be determined by the intent of the parties. There are no technical words which determine this point."

Findlay *vs.* King, Pet., 346.
Ward *vs.* New England Screw Co., Fed. Cas., 17157.
Rogan *vs.* Walker, 1 Wis., 527.

"In accordance with the same theory, Art. 1031 of the first draft for the Civil Code defines a condition precedent as 'that which suspends the effect of the obligation until

the occurrence or non-occurrence of the event.' I sell Jose an estate, if he travels abroad this year. I sell Pedro an estate, provided he does not marry within a year. I give Juan an estate, if he shall be living upon my return from Russia. These are examples of conditions precedent; and, as easily understood, the obligation exists, but its effect is suspended until the journey is made, until the year expires, or until the grantor returns from Russia."

Galindo (*supra*), pages 621-2.

"Conditions precedent may be implied, and in the inscription the clauses containing them must be set out; for they produce the same effects as do express conditions."

Galindo (*supra*), page 625.

"The construction must depend upon the intention of the parties, as gathered from the instrument and the existing facts, since no technical words are necessary to determine the question."

Washburn, Real Property, Vol. 1, p. 446.
Tiedeman (*supra*), Sec. 273.

In the case at bar the language of the condition is this: "This instrument shall be presented to the Politico-Military Governor of the Province of Isabella in order that he may take note of the same in his office and confer possession in the ordinary legal form, under pain of nullity if this is not done."

"For the proper construction of an instrument, the circumstances under which it is made, including the situation of the subject of the instrument and the parties to it, may also be shown, so that the Judge may be placed in the condition of those whose language he is to interpret" (Code of Procedure, Sec. 189).

Certainly it would be a strained construction which would make a condition *subsequent* of a proceeding required in order that the grantee might be put in posses-

sion of his land. On the other hand, to make it a condition *precedent* that the grantee should go to the Province where his land is situated and there be put in possession under the supervision of the Governor, would protect the State to a great extent from the accumulation of desirable public lands in the hands of speculators, and the Spanish Government must have so intended.

The wisdom of complying with these requirements is pointed out clearly by Mr. Justice McDonough in his dissenting opinion on page 194 of the record:

"It cannot be reasonably said that these requirements were not of importance to the government, as well as to the grantee. In order that the Government of Isabella might know what land was granted in that Province it was necessary to have a record of it entered therein, and in order to prevent disputes and litigation regarding boundaries, such as has happened in this case, it was wise practice to have the grantee placed in possession in legal form."

It might also be urged with a great deal of force that upon examination of the description of the land granted in each of the seven grants, it will become apparent that the condition recited in the grant is a condition *precedent* for this reason, viz.: there are not more than two natural boundary lines named in the description of the land granted in any one grant, the other boundaries being those of one of the other grants made at the same time. It was, therefore, a physical impossibility for the grantee to locate his land by the description designated. For the grantee to properly locate his land it was essential that "possession may be given in the usual legal form."

To give possession in the usual legal form would seem to mean, as suggested by this Court in More *vs.* Steinbach, 127 U. S., 70.

"A formal transfer of the property to the grantee by officers of the government was necessary.

"The proceeding was termed a judicial delivery of possession. Until it was had the grant was an imperfect one. As preliminary to, or as part of, the official delivery, the boundaries of the land were to be established after summoning the neighboring proprietors as witnesses to the proceeding."

It is perfectly patent that no one of these grants could be located by any of the grantees, because there were no courses and distances named. To run according to the natural boundaries named and to acquire anything under the grant, the proper officer would have to lay off the land in the manner prescribed by the Spanish law.

In many decided cases in the United States the investiture of title has been discussed and considered. On this question of investiture Mr. Justice FIELD may be quoted with interest in the action of Pacheco et al., *vs.* The United States (68 U. S., 282), as follows:

"When the grant to Pacheco was issued there still remained another proceeding to be taken for the investiture of the title. Under the civil, as at the common law, a formal tradition or livery of seisin of the property was necessary. As preliminary to this proceeding the boundaries of the quantity granted had to be established when there was any uncertainty in the description of the premises. Measurements and segregation in such cases, therefore, *preceded* the final delivery of possession. By the Mexican law, various regulations were prescribed for the guidance, in these matters, of the magistrates of the vicinage. *The conditions annexed to the grant in the case at bar required the grantee to solicit juridical possession from the proper judge.* In compliance with the requirement, within four months after the issuance of the grant, he presented the instrument to the Judge of the district and requested him to designate a day for delivering the possession. The Judge designated a day and directed

that the adjoining proprietors be cited and that measurers and counters be appointed. On the day designated the proprietors appeared, and two measurers and two counters were appointed and sworn to the faithful discharge of their duties. A line provided for the measurement was produced and its precise length ascertained. The measurers then proceeded to measure off the land; the Judge and the proprietors accompanying them. The measurement being effected, the parties went to the center of the land, and there the Judge directed the grantee to enter into the possession, which he did, and gave evidence of the fact by pulling up grass and making demonstrations as owner of the land. Of various steps thus taken, * * * a complete record was kept by the Judge in a 'Book of Possessions' * * *. The ownership, extent and general location of the land were matters thus brought within the knowledge of the neighborhood and were, no doubt, afterwards the subjects of frequent reference among the adjoining proprietors."

Again, if it had been intended that title should vest at once and that the grantee should thereafter perform the condition, a time would have been fixed for such performance; the failure to fix a time for the performance of a condition subsequent would make the condition valueless and not only this, for it would be leaving the performance of the condition entirely at the will of the grantee, which, according to Art. 1115 of the Civil Code, would make the grant void. In order to derive a reasonable construction of the condition, we must read it as precedent.

Finally, if it had been the intention to make the condition subsequent, it is reasonable to suppose that the grant would have read, "under pain of forfeiture," or "under pain of rescission"; but the phrase used is "under pain of nullity," and as that which is null cannot be annulled, it is difficult to see how the grantor could have meant that

an action or proceeding must be instituted to forfeit the grant for breach of condition subsequent.

The language employed and the circumstances under which the grant was given indicate clearly that the condition in the State's grants, Exhibits 1 to 7, was a condition precedent. From this it follows that plaintiff's failure to prove the performance of the condition renders plaintiff's title, deeds and title absolutely invalid and worthless.

"There was no record made of the grant, as required by law; the public record thereof, and not the document delivered to the party, was the effective grant. There was no juridical possession. The title, therefore, did not become definitely vested. A grant cannot perfect or complete the title when anything remains to be done to perfect it."

Bouldin *vs.* Phelps, 30 Fed. Rep., 547-558.

In the case of Fremont *vs.* U. S., 17 How., 442, this Court called attention to the fact that such grants as in the instant case were almost always made upon condition of settlement, or some other improvement by which the interest of the colony, it was supposed, would be promoted.

In this connection the Court said:

"But until the survey was made *no interest, legal or equitable, passed in the land.* The original concession granted a naked authority or permission and nothing more. * * * The examination of the surveyor, the actual survey, the return of the plot, were *conditions precedent,* and he had no equity against the government and no just claim to a grant until they were performed."

THIRD ASSIGNMENT OF ERROR.

The Trial Court held that the plaintiff company never lost the possession of the land in litigation (R., p. 124),

and the Appellate Court found that it went into possession of the land and that it had maintained actual or quasi possession (R., p. 193). These conclusions are not justified from the facts in the record. When the witness Macias y Toro, the Philippine representative of the tobacco company, was asked how he proved the possession of the plaintiff from 1883 to the time of the trial in 1902, he replied that Exhibits 1 to 9 proved it (R., pp. 14, 15). The witness also said he proved possession that plaintiff had paid the taxes in the year 1902, and that the boundary lines were rectified in 1889, 1894 and 1901, and that the company had cut timber in different parts of the haciendas without any opposition from any one (R., p. 16). There are sixty parcels in the haciendas, but it does not appear *where* the plaintiff cut the timber. It must be remembered also that three thousand nine hundred hectareas are almost equal to nine thousand acres. It is submitted that not one of these acts constitutes possession.

"Payment of taxes, surveying and assertion of right do not alone constitute possession. They merely show claim of title. Such acts as going upon land from time to time and cutting logs thereon do not give possession."

Newell on Ejectment, Chap. 13, Sec. 8.

There is no proof that the plaintiff company had ever exercised acts of ownership over land within the described perimeter until August, 1902, when it put a wire fence around the lands in litigation, or twenty years after it acquired its alleged title (R., pp. 86, 87).

The record may be studied from cover to cover, and we guarantee there cannot be found any other evidence to support the finding of the Court.

FOURTH AND FIFTH ASSIGNMENTS OF ERROR.

Although only seven out of the sixty alleged grants it is stated Casal secured from the original grantees, which it is claimed comprise the "haciendas," were exhibited or offered in evidence, the defendant in error proceeded to introduce in evidence Exhibits 8 and 9, both purporting to convey all of the land mentioned in the sixty grants.

Upon these two instruments rest the entire strength of the defendant in error's title and case.

Certainly it cannot seriously be contended that these documents, Exhibits 8 and 9, could convey more than the total amount of land embraced in the seven grants (Exhibits 1 to 7), which is less than 800 hectareas; and as a necessary consequence they are equally subject to the same defects we previously pointed out. But there were other and further objections to these instruments, viz.: the register did not show that their registration complied with the requisites prescribed by law; and the boundaries were not properly described (R., pp. 15, 16). At the foot of Exhibit 8 appears the following:

"Inscription of the foregoing document refused on account of the defect of lack of personality of the corporation therein named, and this defect is incurable, no cautionary note will be entered." Ilagan, March 9, 1895, Juan Conde, Registro de la Propriedad Isabella (R., p. 51).

Immediately following this note is a certificate of pretended inscription of 1898:

"This document is inscribed in the first volume of the Municipality of Cauayan, Archive 11 of this Registry, folio 118, estate number 75, first inscription. And in the second provisional volume of the Municipality of Agandanan, first provisional volume of the Archive, volume 7, estate number 182, first inscription. Ilagan, September 17, 1898. Lic. Juan Garcia Rodrigo. Fees 65 pesos, 92

cents. Numbers 2, 3 and 7 of the tariff; Registry of Property of Isabella."

The Mortgage Law provides certain remedies for the refusal of a registrar to record an instrument, these remedies being in the nature of appeals either to the courts or to administrative officers. Article 18 provides that there shall be no other remedies for refusal to inscribe. The second note at the foot of Exhibit 8 does not recite that the inscription of 1898 was made by order of the court or a superior officer by virtue of an appeal. Either the Registrar Rodrigo acted illegally in reversing without authority the decision of his predecessor, Conde, or, as defendants urged, the inscription of the registry was forged.

"He (the registrar) cannot pass upon the documents already inscribed in the *same* registry or in the old 'contaduria'; but he can and he must pass upon the titles which before have been passed upon and inscribed or refused in *other* registers, and for which inscription is asked in his, because each register is responsible for his acts. *But he cannot pass upon the validity or nullity of those entries already made, which, from the mere fact of being made, are within the jurisdiction of the tribunals.*"

Galindo (*supra*), Vol. 2, pp. 18 and 19.

The first three paragraphs of Article 20 of the Mortgage Law forbids the recording of instruments transferring real property unless the interest of the grantor has been previously recorded, but the exception is made that a deed may be recorded where the grantor's interest was acquired before the day on which the Mortgage Law went into effect, and in such case the grantor's title must be justified by trustworthy documents, the essential features of which shall be indicated in the record. It has been shown that

Casal's title was not recorded. It was patent to the Court upon the presentation of Exhibits Nos. 1 to 7 that the recording of Exhibits 8 and 9 was not within the exception of the Mortgage Law, from the fact that the purported certificate of registration does not set forth the facts constituting such exception. For this reason alone the Court below erred in upholding the Trial Court in admitting Exhibits 8 and 9 in evidence.

It is an elementary principle of Spanish law, as well as of the common law of England and the United States, that one in possession of land is presumed to be its owner until the contrary is clearly made to appear; and this presumptive title arising from naked possession alone is good against all the world until one with a better title comes into court and establishes it by legal proof.

"The possessor by virtue of ownership has in his favor the legal presumption that he holds possession by reason of a sufficient title and he cannot be forced to show it."

Art. 448, Civil Code.
King *vs.* Mullins, 171 U. S., 404.
McGuire *vs.* Blunt, 199 U. S., 142.

That there is no difference in the Spanish law from the common law in reference to the character of proof in actions of ejectment is recognized by the Supreme Court of the Philippine Islands in this case.

Mr. Justice JOHNSON says:

"This is an action of ejectment. The doctrine is well established in an action of ejectment, the plaintiff seeking to recover possession of land occupied by another must recover upon the strength of his own title, rather than upon the weakness of the title of the defendant, and the burden of showing his title rests upon him who asserts it. Ordinarily, the plaintiff may prove his title by showing grants direct from the government, or by a connected

chain of title back to the government, or to some grantor in possession" (R., 192, fol. 354).

And Mr. Justice McDonough, in the dissenting opinion, said:

"It is, of course, primary doctrine that in a possessory action of this nature the plaintiff must rely on the strength of his own title, not on the weakness of that of the defendants."

We find the defendant in error alleges in the third paragraph of the amended complaint:

"That said company is the owner of some lands situate in the Town of Cayagan and Angadanan of this Province, known as the 'Hacienda * * * ' bounded on the north by the Rio Grande de Cayagan and by the land of Victor Guzman * * * ; on the east by the Cornayan Estero and by the public lands; on the south by public lands and by the Rio Grande de Cayagan; on the northwest by public lands and by part of the ranchos of Mabantad, Caraban and Andarayan; and on the west for its whole length by the Rio Grande de Cayagan; having a superficial area of 3,956 hectareas, etc.

"That the defendant illegally seized and continued to hold certain portions of the said property, which said portions together have a superficial area of 446 hectareas, approximately, as to the lots on which their houses and warehouses are built, distributed among distinct and separate parcels, *but all within the perimeter of the said estate above described.* And for the better understanding thereof the following statement is given of the parcels held by each one of the defendants:

"Dionisio Respicio holds a lot of 6 areas, approximately, on which he has erected a house and warehouse, with two parcels of arable land, one of which has an area of 9 hectareas and the other one hectarea" (R., pp. 7 and 8).

Then follows a like description of the lands of each of the other plaintiffs in error. Nowhere is there contained

any allegation whatsoever of the location of 446 hectareas or of the land held by any particular individual.

The answers deny the boundaries as set forth in the complaint and also deny any ownership of the defendant in error to the land in question. Consequently it was absolutely essential for the defendant in error to establish his title to the entire perimeter as described in the complaint before he could recover in this action.

As was said in Maddux *vs.* West:

"It is for the plaintiff to show his title up to the boundaries which he claims, and he can recover no further than he proves his land to run" (6 Ohio Dec., 1010).

Maxwell Land Grant Co. *vs.* Dawson, 151 U. S., 586. After briefly discussing the points involved, Judge PARADES, who tried the case in the Court of First Instance, said:

"For the purpose of deciding these questions, it is therefore necessary to examine and pass upon the following questions:

"First. Is the Compania General de Tabacos de Filipinas really the owner and possessor of the Hacienda de San Luis y la Concepcion with the situation, superficial area and boundaries described in the complaint? Unquestionably, this appears in the first place by documents 1 to 9, inclusive, all recorded in the Registry, and from the plan of document 10, which is an integral part of document 8" (R., 122).

The above conclusion reached by the trial judge and upheld by the court below, we respectfully submit, irrespective of all the other defects, which we have heretofore discussed, is absolutely unwarranted and could not be reached by any process of reasoning known to the law without an absolute disregard of the fundamental rule that the

allagata and *probata* must agree. This is made perfectly manifest by a comparison of the description of the "haciendas" in the complaint wherein it is alleged that it is bounded "on the north by the Rio Grande de Cayagan and by the land of Victor Guzman" (R., p. 7), with that in Exhibit No. 8 (R., p. 48), where the "haciendas" are described as bounded "on the north by the arable lands of Joaquin Guzman." Exhibit 9 is simply a confirmatory agreement between the same parties, and adopts the same description as contained in Exhibit No. 8 (Rec., p. 61).

The complaint alleges the land contained in the described boundaries amounts to 3,956 hectareas, 25 areas and 28 centiareas. Exhibit No. 8 says the land contained in the boundaries therein alleged is 2,902 hectareas, 71 areas and 78 centiareas, more than 1,000 hectareas less than the land claimed. It is true Exhibit No. 9 recites the amount of land conveyed to be 3,956 hectareas, 25 areas and 28 centiareas, but, as we have above pointed out, there is no difference in the description of the boundaries in Exhibit No. 9 from that contained in Exhibit No. 8. It is also incomprehensible how the Trial Court could have reached the conclusion *from the evidence* that Exhibit No. 10 was an integral part of Exhibit No. 8. There is not a scintilla of evidence, either intrinsic or extrinsic, that makes it such; and there are some things about it that tend to show it had no connection with Exhibit No. 8, for instance, on its face it directly contradicts the description of the boundaries of the land as described in Exhibit No. 8.

Sixth Assignment of Error.

During the examination of the witness Miguel Macias, Exhibits 1 to 7 were introduced in evidence, under objection of the defendants. The defendants stated their

grounds of objection. The trial judge, in passing on the objection, declared:

"That he should and would admit all the documents presented by the plaintiff, and such other documents as might thereafter be presented, because the case is open for the taking of testimony, and it was necessary to admit all kinds of evidence, more especially as the documents in question were apparently recorded in due form, and that the grounds of the objection would be taken into consideration in the final result" (R., p. 15).

During the examination of the witness the Trial Judge also warned defendants' counsel from stopping witness in his testimony (R., p. 17). This ruling is obviously prejudicial to the defendants, as it forbids counsel to present his objections and exceptions. In consequence of this ruling, it must be presumed that the defendants were greatly prejudiced, and that a great deal of incompetent matter appears in the record, to which no objection was interposed because of the warning of the Court. The failure to duly object may be well understood, and defendants' exception to the ruling which is so assigned as error must necessarily imply due objection and exception to all the improper evidence subsequently introduced.

Seventh Assignment of Error.

Exhibit No. 13 (R., p. 64) is a contract between the plaintiff company and a number of native farmers, including four of the defendants, in which contract these farmers, among other provisions, recognize the plaintiff's title to the land which they are working as tenants. There seems to be an uncertainty as to the purpose of the plaintiff in introducing this document. The plaintiff company stated that it was offered as evidence of acts of ownership exercised by it, and, further, to show that the defendants who

did not sign it were not at the time of its date in occupancy of the lands now in litigation (R., p. 17). The defendants objected to its admission, because it had not been set up in the complaint. It certainly is not clear how this instrument could be construed to be an admission which in any way bound the eighty-four defendants. The four defendants whose names purport to have been signed at their request by employees of the company may have been tenants as to the lands described in Exhibit No. 13. There is nothing in the exhibit to show that these lands are the same as those in litigation. On the contrary, all the lands therein referred to are in the District of Minanga, and the plaintiff does not claim in this action a foot of land in Minanga (see Exhibits 1 to 10), which, as plaintiff claims, comprises all the lands in litigation. The statement of the witness Macias that Exhibit No. 13 applies to the lands in litigation cannot avail to vary the terms of the instrument itself.

It is respectfully submitted that this instrument has no probative value as against any of the defendants, and that it could not prove or tend to prove that the seventy-nine defendants who did not join in this contract were not then in occupancy of the lands in suit is too plain for serious consideration.

Eighth Assignment of Error.

Exhibit No. 14 (R., p. 157) is a certified copy of a judgment rendered in favor of the plaintiff in an action brought against it by Nicolas Lacaste and others. It is introduced to show that "certain important witnesses of the defendants cherish a resentment toward the plaintiff" (R., p. 121). Lacaste, Dionicio, Cuntapa, Manuel Medina and Piedro Careaga were witnesses for the defendants, who were par-

ties to this judgment. In the cross-examination of Lacaste, plaintiff laid no foundation for the introduction of this judgment. These witnesses may not have had a feeling of affection for the plaintiff company, but it is submitted that there is no rule of evidence which discredits the testimony of a witness solely because he is not a friend of the party against whom he is called. None of these witnesses was a party to the present suit. It might be shown, however, that a witness who is a party to a suit might profit or lose by its outcome, but the law does not allow the presumption of truthfulness to be overthrown by a vague inference of possible resentment, which is all that can be adduced from Exhibit 14. The exhibit was undoubtedly irrelevant and immaterial and should have been excluded. The prejudice resulting to defendants by its admission appears from the fact that the Court apparently relied upon Exhibit 14 in weighing the testimony, for in its decision the Court disparages defendants' witnesses on the ground that some are plaintiff's manifest enemies (R., p. 125). That the Trial Court regarded it as of some value is very manifest from the decision. This error is assigned, although there is no specific objection and exception in the record, for the reason that the Court warned the defendants' counsel not to interrupt witnesses, and which fact is dwelt upon under the sixth assignment of error.

Ninth Assignment of Error.

Manuel Nieto, an employee of the plaintiff company, called as plaintiff's witness, testified to the authenticity of Exhibit No. 13, and stated that at the date of the execution of Exhibit No. 13 only four of the defendants were on the hacienda, because he had traversed the hacienda thoroughly at that time, and if there had been others of the defendants then within its boundaries they would have

signed the contract (R., p. 23). On cross-examination, defendants' counsel endeavored to ascertain from the witness what he understood or meant as to the extent of the hacienda. Exhibit 8 purports to be plaintiff's title deed, and contains a description of its lands, differing from that alleged in the complaint. Counsel asked, "Are you acquainted with Exhibit No. 8 and its contents?" The Trial Court replied, "That the witness was called to testify concerning Exhibit No. 13, and that his examination should, therefore, be limited to that point. As to whether he does or does not recognize the document No. 8, this is not a matter upon which he could be interrogated, because he did not present it, and if it is admitted that it speaks for itself, all questions would appear to be unnecessary. I therefore rule out the question, and beg you, for the sake of prompt administration of justice, to have the goodness to frame your questions less capriciously and make them more pertinent, because it does not appear to be just that a witness called to prove one particular fact should be tortured with questions which are enough to disconcert the most self-possessed of men" (R., p. 25).

It is submitted that greater latitude should have been allowed by the Trial Court in cross-examination. The abridging of this right by the Trial Court naturally restrained the defendants' counsel from ascertaining the truth by cross-examination at the expense of incurring the Court's displeasure.

Tenth Assignment of Error.

The Court erred in affirming the Trial Court's denial of defendants' motion for an order that the records of Canayan and Angadanan be brought into court for inspection and examination.

Section 330 of the Code of Civil Procedure provides:

"The record of a conveyance of real property, or any other record, transcript of which is admissible in evidence, cannot be removed from the office at which it is kept, except upon order of a court, or in cases where the inspection of the record is shown to be essential to the just determination of the case, or action, or proceeding, pending, or where the court is held in the same building with the same office."

Defendants denied the genuineness of Exhibits 8 and 9, and insisted that they were fraudulent and forged (R., p. 83 and 119), and requested an order that the records be brought into the court so that the signature might be examined and witnesses called who knew the true signature of the registrar. There were, moreover, certain irregularities apparent on the original registry tending to show illegality and fraud of the pretended registration of September 17, 1898, to the occupation of Ilagan by the insurgent force. These irregularities do not appear in the bill of exceptions because of the Court's refusal to allow defendants to present the original record, by which they alone could be shown. It is clear that the forgery and other defects alleged by the defendants could not be proven by the transcript of the registry. The production of the original records in court was essential to a determination of the validity of the registration of plaintiff's title deeds.

Article 795 of the Code of Civil Procedure expressly repealed all former laws affecting procedure, but the Court of First Instance held that Article 225 of the Mortgage Law, which forbids the removal of the books of registry from the registrar's office is still in force, although admitted to be inconsistent with Article 795 of the Code of Civil Procedure. For, says the Court:

"The present Code of Civil Procedure, being of a general

character, cannot, although of later date, derogate an earlier law of special character. The motion is denied."

In his opinion the Trial Judge states:

"I have made an ocular inspection of these signatures, and, although I must confess I have had no technical training as a handwriting expert, I have had, nevertheless, sufficient practical experience to be able to determine *a priori* whether a signature has or has not been falsified, imitated or forged" (R., p. 124).

And it is thus apparent the Trial Court contents himself with the declaration of his own ability to detect forgeries, however, carefully abstaining from any decision as to the genuineness of the signature under determination.

ELEVENTH ASSIGNMENT OF ERROR.

We submit that from what we have heretofore pointed out, under the former assignments of error it is perfectly plain that the judgment of the Court below cannot be supported upon any possible theory. Even should we concede for the sake of argument that the seven grants passed a good title, it is a superhuman endeavor to undertake to stretch 800 hectareas into 3900 hectareas claimed in the complaint. It is also perfectly manifest that the haciendas were supposed to have been made up of sixty grants, and there has been proof in this case of but seven. Consequently, a supposed map of the sixty grants, without the slightest degree of proof of the location of the other fifty-three, or to whom they were made, cannot show the location of the seven; especially in view of the fact that none of the seven were ever *located.*

When we examine the seven grants for the purpose of determining these boundary lines we find it is an absolute

physical impossibility for any human being to locate these tracts with or by the descriptions contained on the face of the grants, as in no one of the grants are there more than two natural boundaries given. The other boundaries are lands denounced by some of the other grantees, and all of the grants purport to have been made on the same day.

In conclusion, we therefore respectfully submit the judgment of the Court below should be reversed and the case remanded.

JOHN C. GITTINGS,
WM. STEELE GREY,
Attorneys for Plaintiffs in Error.

Office Supreme Court, U. S.
FILED.
APR 7 1909
JAMES H. McKENNEY,
CLERK.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 148.

MIGUEL TUPINO ET AL., PLAINTIFFS IN ERROR,

vs.

LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR DEFENDANT IN ERROR.

ALDIS B. BROWNE,
ALEXANDER BRITTON,
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J. H. BLOUNT,
Attorneys for Defendant in Error.

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BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

From the bill of exceptions (R., 1) it appears that at the December term, 1902, of the Court of First Instance of the Province of Isabela, First Judicial District of the Philippine Islands, there came on to be tried the case of the General Tobacco Company of the Philippines, a corporation organized under the laws of the Kingdom of Spain, represented by its agent, Don Miguel Macias y Toro, plaintiff, against Miguel Tupiño, and others, defendants, the same being an action of ejectment.

Plaintiff's amended complaint (R., 7-13) alleges substantially that the defendants "above named," a list of whom,

eighty-four in number, had formed part of the title and caption of the original petition (R., 6) "for more than one and less than six years ago, illegally seized and continued to hold" certain "distinct and separate parcels" of the property of plaintiff; that the total area of said several distinct and separate parcels is something over four hundred and forty-six (446) hectares (about 1,100 acres), but that each of said parcels is within the perimeter of plaintiff's estate, the Hacienda de San Luis y La Concepcion, which estate is described in the original petition as having an area of about 3,956 hectares, or 10,000 acres, more or less. Then, "for a better understanding," says the amended complaint, a description of the eighty-four separate parcels occupied by each of the eighty-four defendants is given. The accuracy of each description is not denied in any one of the eighty-four distinct and separate answers filed. The amended petition then prays for judgment "for the possession of the said portions of the 'Hacienda de San Luis y La Concepcion,'" and "that the proper officer be directed to restore the said company, through its agent (naming him), to the possession of the various parcels of the said estate above indicated." It closes with a prayer that after eviction all the defendants be enjoined from thereafter disturbing plaintiff's possession, and asks for nine thousand (Mexican) dollars damages and costs. The bill of exceptions makes the unqualified statement above mentioned that this was "an action of ejectment," without mentioning the prayer for injunction.

After thus characterizing the action, it proceeds to set forth that the trial of the case began on the 11th and ended on the 24th of December, 1902; that the agent of the plaintiff company, the aforesaid Macias, having been called as the first witness, and duly sworn, offered and read in evidence seven deeds, marked Exhibits 1 to 7, inclusive, dated October 20, 1882, from the "Intendencia General de Hacienda de estas" (Sc. "Islas," meaning "of these Islands"), the Insular Treasury Department. These seven deeds were to seven

persons named and purported to convey title to lands comprehended within the "Hacienda de San Luis y La Concepcion." Defendants objected to the admission of said deeds in evidence, upon the ground that they were invalid on their face, in that they had not been (duly) recorded in the Province of Isabela, and that the grantees had not been placed in possession obediently to certain clauses in the deeds which defendants insisted were conditions precedent to the vesting of the estate. The court overruled the objections and defendants excepted. The deeds, Exhibits 1 to 7, are set out in full in the record (pp. 25-40).

Plaintiff also offered and read in evidence a deed marked Exhibit 8, dated October 31, 1887 (R., 43-54), from the executor of the estate of a certain decedent (who bought from the seven original grantees) to the plaintiff company, conveying a described tract of land "not including," says the bill of exceptions, "the premises in suit, which are described in said deed as forming the boundaries to the North and Northwest of the 'Hacienda de San Luis y La Concepcion.'"

It should be noted that the language quoted is purely gratuitous on the part of counsel who drafted the bill of exceptions. The certificate of the Judge to the bill of exceptions (R., 55), does not purport nor intend to vouch for the truth of all the recitals it contains because—

(1) Unlike most American statutes on this subject, the law cited in the body of the certificate, Sec. 143 of the American Code of Civil Procedure in the Philippines, does not specifically require the judge to certify that the recitals contained in the bill of exceptions are true.

(2) It is clear from his name that his honor, Don Isidro Paredes, is not an American, and from that fact it is presumable that he was not familiar with the American practice, under which the trial judge rigidly excludes from the bill of exceptions all recitals of fact deemed by him to be unwarranted.

(3) His rulings and final judgment hold, in express language and effect, the exact contrary of the erroneous recital of counsel above quoted.

(4) That the said recital is, in fact, untrue will appear from an examination of the deed—Exhibit 8, in connection with the map, Exhibit 10. It is not the "uncultivated lands" of the three ranchos mentioned, but the cultivated lands—those occupied by the defendants—that are in dispute.

Plaintiff also offered and read in evidence (R., 2) a document marked Exhibit 9, dated November 21, 1887 (R., 52-63), referring to the Hacienda de San Luis y La Concepcion, calling for a fraction over 3956 hectares, or as stated, about 10,000 acres, which purports to be merely an amplification of the aforesaid deed of October 31, previous.

Both said documents bear an entry showing that they had been recorded in the Registry of Property of Isabela Province on September 17, 1898.

Defendants objected to the admission of the two instruments upon several grounds. All these grounds, except one, presented issues of fact which were decided adversely by the trial court, whose judgment was affirmed by the Supreme Court of the Philippines. The one ground material to be noticed here, therefore, is the objection that the deeds had been defectively recorded. They were admitted in evidence after objection, and defendants assigned error upon this ruling.

Plaintiff next offered in evidence (R., 3) an instrument purporting to be a rent contract, dated February 29, 1896, between one Manuel Nieto, representing plaintiff company as landlord, and some fifty-one persons as tenants, among which fifty-one appear the names of four of the defendants. Defendants objected to the admission of this contract, on the ground that it was not alleged or pleaded in the complaint, which objection the court overruled, and to this ruling defendants excepted. After the evidence was concluded, and after argument had, a decision was rendered against the defendants "ordering them," protests the bill of exceptions

(R., 3), "to vacate the premises of which they have been in possession for periods ranging in time from two to thirty years."

The bill of exceptions was "allowed" and the Court directed the case to be forwarded to the Supreme Court of the Philippine Islands (R., 5).

Immediately following the bill of exceptions (R., 6-13), appear the original and amended complaint, whose contents, it is assumed, have been sufficiently indicated in the foregoing summary of the bill of exceptions to make clear the errors complained of.

Each of the eighty-four defendants filed a separate answer. All the answers were alike, therefore only one was sent up in the record. In the typical answer the defendant denies plaintiff's title to the land described in the complaint as held by the defendant. The typical answer appears on pp. 13-14 of the record. On page 227 of the record appears the statement as to the identity in form of all the answers.

Macias, the first witness for plaintiff (R., 14), the company's agent, offered and identified plaintiff's title deeds (Exhibits 1 to 9). He also offered (R., 16) a map of the Hacienda de San Luis y la Concepcion which, it appears, was marked Exhibit 10. This exhibit does not appear in the original record. The only trace of it there appearing is in the letter of the clerk of the trial court, addressed to the clerk of the Supreme Court of the Philippines, transmitting the transcript of the record, and stating that he sends the *original* map (Exhibit 10) because he has no copy. However, while the map is not essential to a clear understanding of the errors sought to be reviewed and corrected, same has been by proper stipulation embodied in the record (Supp.).

Macias testifies to surveys of the land made by the company in 1888, 1894, and 1901, and that no opposition was made to these surveys; also to the cutting of timber by the plaintiff company without opposition from any one, not even from the local officials of the Forestry Bureau; and to the assassination

of the company's employés, the allusion being to trouble with trespassers, apropos of which he says that—

> "the ownership of the company is sealed with the blood of its employés."

The contention of defendant in error is that the people who are causing all this trouble on their land are squatters.

During the direct examination of *Macias* occurred this question and answer (R., 16):

> "Q. What leads you to affirm that the defendants illegally detained and continued to illegally detain each and every one of the parcels in question?
>
> "A. Because each and every one of the parcels is comprised within the perimeter of the hacienda, *and they all knew that the said parcels really belonged to the company.*"

The words italicized should end this case as to all but five of the defendants; for only five of the eighty-four defendants denied the truth of them. Only five of the eighty-four defendants testified at all. Those five were Justo Allam, Zacarias de la Cruz, Augustin Dorone, Dionisio Respicio, and Teodoro Vidal. Of these Justo Allam appears to have signed the rent contract of February 29, 1896, Exhibit 13 (See R., 64.) So that if that document be genuine he has attorned to the plaintiff. He denies having signed it, and says that Macias wanted him to do so, but he refused. He claimed thirty years' occupation of the land of which, in the complaint, he was alleged to be wrongfully in possession. The trial court, with ample opportunity to see the witness in person and observe his manner of testifying on the stand, decided against him and its decision was affirmed.

Dionisio Respicio claimed in his testimony (R., 82) 12 years' occupation, without claiming to have any color of title.

Agustin Dorone, in his testimony (R., 85), claimed eleven years' occupation, but claimed no color of title. He testified that Dionisio Respicio was already there (on this land) when

he arrived. This man's evidence, and that of the other four defendants, is sufficient to show distinctly how utterly foreign to the idea of a "joint entry" and ouster is the attitude of both plaintiff and defendants in this case.

Zacarias de la Cruz, the fourth of the only five defendants who testified (R., 85), claimed eleven years' occupation, but claimed no color of title. He also testified that Dionisio Respicio was there—on the land—when he arrived and settled upon it.

Teodoro Vidal, fifth and last of the five defendants who did not remain mute in the face of Macias' declaration in their presence that they all knew the land belonged to the company, claims fifteen years' possession. Like the rest, he does not claim color of title.

Pursuing the thread of Macias' testimony, he was asked (R., 17) if four of the defendants, naming them, have attorned to the company, and answered in the affirmative, stating that they signed the rent contract (Exhibit 13) of February 29, 1896 (R., 64). *No one of the four persons thus named testified in this case.* Macias gives the key just here to the whole trouble. They repudiated their rent contract and claimed to own the land "when the revolution broke out" (1898) (R., 17).

Manuel Nieto, the next witness for plaintiff (R., 22-25), corroborates Macias about the rent contract of February 29, 1896. He speaks of it rather näively as "a contract with certain individuals who had taken the liberty of working lands belonging to the company," and that none of the signers objected to signing it, and he specifically mentions the only four of the defendants in this case whose names appear signed to the contract aforesaid, namely, Justo Allam, Arcadio Tubera, Eugenio Guzman, and Augustin de la Fuente, as having "voluntarily signed the contract without making any objection thereto" (R., 23). Asked if any others of the defendants besides the four above named were on the company's land in February, 1896, at all, Nieto said:

"No, sir, there were only those four persons because I went over the whole hacienda, and if there had been any other tenants it is evident that they would have all signed the contract."

Immediately following this answer, his examination proceeds thus:

"Q. How many years have you lived in the valley, and how many years have you been an employee of the company?

"A. I have lived in the valley twenty-six years, and have been an employee of the company since 1882.

"Q. What was your position with the Compania General on the 29th of February, 1896?

"A. I was representative of the Compania General de Tabacos in this province.

"Q. In what house was the contract in question signed?

"A. In a house which no longer exists.

"Q. Can you describe the situation of the house?

"A. It was a place on the hacienda very near where the warehouse now stands.

"Q. Were you present there all the time these men signed?

"A. Yes, sir; and afterwards I carried the document away with me.

"Q. Did you take the contract there already drafted, or was it drafted where it was signed on the date indicated?

"A. No, sir, it was drawn up after the terms of the contract had been discussed and after they were convinced that they were to sign a just agreement.

"Q. Do you remember how many hours were devoted to the drafting of the instrument and to the signature of the contract in question?

"A. It was all done in three hours, I believe."

Of the four defendants whose names appear signed to the contract of 1896, Justo Allam is the only one who can even pretend to have the slightest standing in court, because he

alone denied having signed it. The other three did not testify at all. Likewise, all the rest of the defendants who failed to testify are deprived, by Nieto's testimony, of all standing in court, because they did not deny his statement that in 1896 they were not on the land.

In view of an extended discussion in the dissenting opinion (R., 193-197), wherein it is assumed that a government survey was a necessary condition precedent to getting title from the Government under the Philippine Public Land Laws, the following from Nieto's testimony (R., 24) is material and pertinent:

> "Q. Were you present at the survey of the hacienda at any time, and if so, when?
>
> "A. Yes, sir; I was present at the survey before the hacienda belonged to the company. This was in 1882, if I recollect correctly.
>
> "Q. Are the lands which you assisted to survey the same as those which were subsequently transferred to the Compania General de Tabacos and which are now known as the Hacienda de San Luis y la Concepcion?
>
> "A. Yes sir, the same."

The cross-examination of the witness Nieto is framed with a view of showing that the deeds in evidence do not include the land in dispute. But the trial court held otherwise (Rec., 124-125), and its decision having been affirmed by the Supreme Court of the Islands, no attention will here be paid to the question of boundaries. In fact, that question was even waived by the dissenting opinion, (R., 194).

The record is not very systematically arranged, but it must be taken as we find it. Following the testimony of the witness just quoted from, appear Exhibits 1 to 13, covering pages 25 to 66 of the record.

Gregorio Soriano (R., 66), corroborates Macias as to the 1901 survey, stating that he is a surveyor and did the surveying.

Ignacio Flores' testimony (R., 69), shows most conclusively how foreign to this case is the idea of a "joint entry" and ouster. He also mentions happening to know where two of the defendants (naming them) lived in 1896, and gives as their places of residence at that time, places not on the land in dispute. One of these two did not deny this, for he was among those who failed to testify at all. The other did testify (R., 82), but did not deny this statement.

Lucas Mendoza, a witness for the defendants (R., 71), corroborated Macias and Soriano as to the 1882 survey of the Hacienda de San Luis y la Concepcion, saying he assisted in it, and in the next breath stultifies himself as follows (R., 72):

> "Q. Since when have you heard of the existence of an hacienda called San Luis and La Concepcion?
> "A. Since the last few days only."

The remainder of the testimony for the defendants, including their documentary evidence (R., 73-102), is immaterial, because it deals with questions of fact as to boundaries and other matters that were settled adversely to the defendants by the decision of the trial court and affirmed by the Supreme Court of the Islands. The only assignments of error before this honorable court are upon questions purely of law.

Jose Poo, a witness for the plaintiff company (R., 144-147), says he was storekeeper for the company at Cauayan in 1895. Thither the natives of the region round about brought their tobacco crops to be appraised and sold to the company at its store. He also says (R., 145) that none of the defendants were on the Hacienda San Luis y la Concepcion in 1896 except the four who signed the rent contract of February 29, 1896 (Exhibit 13, R., 64). The following from the record of his testimony (R., 145) is important, as corroborative of other evidence to the same effect hereinbefore quoted:

"Q. How do you know that all the persons who do not appear in the contract which you have just read were not on the lands included in the hacienda referred to, in the year 1896?

"A. Because the manager at that time, Don Manuel Nieto, ordered the employés in his confidence to go over the whole estate and to summon all the squatters to take part in the execution of the contract, which they did; and when they came, they stated that there were no other persons upon the hacienda."

Assuredly, this shifting of the burden of proof calls for a denial upon the part of the seventy-seven defendants who did not testify in their own behalf.

Manuel Rodriguez (R., 147-149) also corroborates Jose Poo as to the rent contract of 1896, as follows:

"A. Yes, I remember, and I was there with another employee of the company, Juan Duran now deceased, and we went from house to house of the squatters living on the lands of the company and told them to go to a house at Minanga, the name of whose owner I can no longer remember owing to the passage of time.

"Q. What was the object of giving this message to the persons you have mentioned in your answer?

"A. To get them to sign a contract acknowledging the ownership of the said lands by the company.

"Q. Was any document written out?

"A. Yes, sir.

"Q. Read Exhibit No. 13 and state if it is the contract to which you have referred in your preceding answer?

"A. Yes, it is the same.

"Q. Do you recognize the signature following at the foot of the said document as being your signature, in your own handwriting?

"A. Yes, sir, I recognize it.

"Q. Was coercion, intimidation, deceit, or other unlawful means used to force those people to sign?

"A. No sir, before they signed the contract it was interpreted into Ilocano and into Ibanag by me and

> others who spoke the dialect, and they consented and signed without any coercion."

Baldomero Guillen is the next witness (R., 149). It appears from his testimony that the survey of 1882, in which the witness Nieto (R., 24) swears to have taken part, was a Government survey. He says (R., 151):

> "Q. Do you know whether a Government Surveyor had ever surveyed the hacienda in question?
>
> "A. I know that when the Company bought these lands that part of them belonged to Senor Casal and part of them to the government and that Rogelio Agustin del Olmo came to measure them and that he was at that time an employee of the Forestry Department.
>
> "Q. Do you know if the said Rogelio Agustin del Olmo surveyed the estate by executive order?
>
> "A. I suppose so because he came by order of the General Inspector of the Forestry Department, where the order may perhaps be found if it has not been lost in this time."

Surely the learned author of the dissenting opinion (R., 193) must have overlooked this testimony, for he says (R., 193):

> "No survey of the lands was made by the *government.*"

E. T. de Andrade (R., 152) corroborates Rodriguez, Poo, *et al.*, as to the contract made with the squatters on February 28, 1896.

Luis de la Vega (R., 154) shows beyond all doubt that the parcels of land which these squatters have occupied were *not* outside of, but *within* the boundaries of the Hacienda de San Luis y la Concepcion.

Mariano Claravall (R., 155) testifies that Dionisio Respicio, the defendant who swears to twelve years' possession previous to the filing of this suit (1902), was living in Ilagan in

1893-4, the seat of government of Isabela province, and where this trial was had.

Foregoing recital from the evidence is admittedly immaterial here. It is presented, however, only to demonstrate the correctness of the findings of the trial court, which following a full *résumé* of the evidence tersely concludes:

> "The lands then, which the defendants possess and "wrongfully hold are unquestionably within the peri-"meter of the hacienda in question" (R., 125).

This finding is, in terms, affirmed by the Supreme Court in its decision (R., 172), and upon this writ of error is conclusive here.

ARGUMENT.

I.

In sustaining the title of defendant in error to the land in dispute, Chief Justice Arellano was very brief (R., 172-174).

The defendants in the suit having objected at the trial to the admission in evidence of the title deeds offered by the plaintiff upon the ground that they had been defectively recorded in the Registry of Property of the province where the land lay, the Chief Justice held that the record was conclusive as to ownership until canceled by the judgment of a court, based upon petition, and proof of a better right on the part of some other person claiming to be the lawful owner. This meant that plaintiff's recorded title deeds were *prima facie* evidence of ownership, placing the burden of proof upon the defendants.

As has already been stated, defendants had also objected, at the trial, to seven of the title deeds under which plaintiff claimed. These deeds were from the Government to certain persons who afterward sold to the plaintiff's grantor. The objection was that they were null and void by reason of the

failure upon the part of the grantee to fulfill certain conditions contained in them. The Chief Justice sustained the trial court in overruling the objection, basing his reasons upon the Spanish civil code (R., 173).

The other two Spanish-reared members of the Philippine Supreme Court concurred. Associate Justice Johnson, one of the American members of the court, filed a concurring opinion (R., 174-193), "because," says he in the outset, "it has been contended that his (the Chief Justice's) opinion is contrary to the weight of authority in the United States." He then enters into an able and exhaustive exposition of the American cases cognate to the subject.

Each of the seven deeds from the Government contains the following provision (all being substantially the same; R., 25-43):

> "I (here follows the name of the Government official authorized to issue titles) issue this title, so that by virtue thereof the (grantee) may be declared the lawful owner of said land. This title shall be entered in the Central Administration of Government Monopolies *and subsequently presented to the Politico-Military Government of Isabela de Luzon, under pain of nullity if the contrary is done, so that it may be entered in that Government and possession may be given in the usual legal form.*" (R., 193.)
>
> For the full text of this deed, see R., 174; also R., 25.

The aim of Justice Johnson's concurring opinion is to show that the conditions contained in the italicized words were *conditions subsequent*, and that title vested in the vendee as soon as he paid his money and received his deed.

Mr. Justice McDonough, however, who filed a dissenting opinion, insisted that these conditions were conditions *precedent*, that no title whatever vested in the grantee at the time of the execution and delivery of the deed to the vendee, that the conditions contained in the deed were not complied

with as therein directed, and that therefore the grantee never did acquire title.

It appears that the seven deeds in question were duly recorded in the proper office at Manila, the seat of government, in the office of the "Central Administration of Government Monopolies," as directed in the body of each deed, on the same day the deeds were executed, October 20, 1882. They were not recorded in Isabela Province until 1898, sixteen years later. There was no general law in the Philippines requiring registry of property until 1889. An attempt at registry was made in 1895 (R., 51). Under the Spanish Civil Code, Sec. 1949, prescription does not run in favor of a squatter as against one holding under a recorded title.

Unlike the opinion of the court delivered by the Chief Justice, both the concurring opinion of Justice Johnson, and the dissenting opinion of Justice McDonough seem to assume a failure to comply with the conditions contained in the aforesaid title deeds, both jurists directing themselves exclusively to the question whether the said conditions were "precedent" or "subsequent."

Before considering the two opinions, it may be well to bear in mind that the vendee not only paid the government the value of the land at the time of the execution and delivery of the deed, which fact is recited in the deed itself, but the purchaser from said vendee (from whom defendant in error bought) went into actual possession of the land, and has been raising tobacco on the land ever since. (See statement, *supra.*)

It should also be noted that the deed which is dated October 20, 1882 (R., 25), shows on its face that on July 6 previous, the grantee had made application to the land office for a piece of public land situated in a named neighborhood of a named province and was awarded the ownership upon condition of payment of its value and the statutory fees. The deed now recites the value and acknowledges receipt of payment of the sum deemed to represent that value (pre-

sumably ascertained in the meantime). It also now acknowledges receipt of the statutory fees. These, the deed tells us, consist of a fractional sum dependent on the value of the land, called "Media Annata," and a sum (presumably a fixed sum) for now issuing the title pursuant to the terms of the original conditional grant. Clearly the value of the land was to be ascertained in some statutory way after the permission was given. This having been done the grant is made absolute. As to the fee of "Media Annata," what the term means in the Philippine Public Land Laws, the Spanish law dictionaries do not state, but "media" means half, and the Century Dictionary, as well as the Spanish law books, disclose that in ecclesiastical law, annata meant certain fees which became due upon appointment to a benefice—*i. e.*, when an interest in certain realty *vested* in the grantee.

The only two elements which prevent the discussion between Justices Johnson and McDonough from being purely academic are:

(1) The sixteen years' delay in having the deeds recorded.

(2) The circumstance that the Spanish laws relating to and authorizing the sale of public lands in the Philippines were not contained in the briefs submitted to the Philippine Supreme Court in this case, nor were they presented to that court in argument (R., 194); so that it did not appear what constituted delivery of possession "in the usual legal form" in the Philippine Islands when these deeds were executed. Judge McDonough mentions this circumstance and then says (R., 194):

> "On account of their absence I may assume that the practice here was similar to that under which grants were made in other Spanish colonies, and which grants contained similar conditions."

And upon this rock he builds the temple of his argument. We respectfully submit

(1) That this assumption is unwarranted;

(2) That it is reasonable to infer that it is erroneous, since the Spanish-reared, native-born members of the court, presumably familiar with the Philippine land-grant laws, considered the title of the defendant in error good and valid;

(3) That after the purchaser of land has been in possession of it for a score of years or more it is immaterial whether or not he complied with "the usual legal form" in getting possession.

The very grave injustice which Judge McDonough's assumption would work to the defendant in error becomes apparent in the language immediately following his announcement of that assumption. He at once takes up, as evidence of what the Philippine law as to delivery of possession "in the usual legal form" is, and how it should be construed, certain decisions of this honorable court upon the validity of grants made in California when California belonged to Mexico, as showing that a preliminary survey by a government official should appear among the title papers, and an order of a court procured putting the purchaser in possession of the land so surveyed.

"The importance of and proceedings relative to the delivery of possession in the 'usual legal form,'" says Justice McDonough (R., 194), "are described by Justice Field in the case of Pacheco (Malarin, he means—Malarin was Pacheco's executor) *et al. vs.* The United States (1 Wall., 282-289) as follows:

> "When the grant to Pacheco was issued there still "remained another proceeding to be taken for the "investiture of the title. Under the civil as at the "common law, a formal tradition or livery of seisin "of the property was necessary. As preliminary to "this proceeding the boundaries of the quantity "granted had to be established when there was any "uncertainty in the description of the premises. "Measurements and segregation in such cases, there- "fore, *preceded* the final delivery of possession.
>
> "By the Mexican law various regulations were pre-

"scribed for the guidance, in these matters of the "magistrates of the vicinage.

"The conditions annexed to the grant in the case "at bar required the grantee to solicit juridical pos- "session from the proper judge. In compliance with "the requirement, within four months after the is- "suance of the grant, he presented the instrument "to the judge of the district, and requested him to "designate a day for delivering the possession. The "judge designated a day, and directed that the ad- "joining proprietors be cited, and that measurers "and counters be appointed. On the day designated "the proprietors appeared, and two measurers and "two counters were appointed and sworn for the "faithful discharge of their duties. A line provided "for the measurement was produced, and its precise "length ascertained. The measurers then proceeded "to measure off the land, the judge and the pro- "prietors accompanying them. The measurement "being effected, the parties went to the center of the "land, and there the judge directed the grantee to "enter into the possession, which he did, and gave "evidence of the fact 'by pulling up grass and mak- "'ing demonstrations as owner of the land.' Of "the various steps thus taken * * * a complete "record was kept by the judge in the * * * "'book of possession.' * * *

"The ownership, extent, and general location of "the land were matters thus brought within the "knowledge of the neighborhood, and were no doubt "afterwards the subjects of frequent reference among "the adjoining proprietors."

The recurring *leit-motif* of the whole of the dissenting opinion is that

"No survey of the lands was made," and no "juridical pos- session" was given.

In the first place, how does the learned judge know there was not a Government survey of the lands in Isabela province already on file in the office at Manila from which these title deeds issued *at the time they issued?* If

a survey was necessary before these titles issued, we have a right and it is our legal duty to the Spanish Government to presume that such a survey was made. Moreover witnesses Nieto and Guillen (see Statement, *supra*) swore that a survey—a Government survey—was made, though the plat of that survey is not attached to the title papers. If Justice McDonough is referring to a survey to be made *after* the issuance of these grants, by what authority does he assume that the Spanish law then existing required such a survey? He finds in the deed itself a requirement that it shall be presented for entry to the authorities of Isabela province, and that possession be given "in the usual legal form." But where does he find his authority for the proposition that at the time these deeds were executed and issued, or at any other time whatsoever for that matter, the Spanish law in the Philippine Islands required that a person who bought a piece of public land from the Government at Manila, after complying with all the preliminary formalities there required, paid for it, and got a deed to it (which specifies certain further formalities, but says nothing whatever about any survey), must procure a survey by the Government and have a plat attached to his title papers?

The author of the dissenting opinion, as already indicated, confesses himself unacquainted with "the laws relating to and authorizing the sale of these public lands" (R., 194), and notwithstanding that the majority opinion of the court, which confirmed the validity of this title, is delivered by one presumably well acquainted and skilled in the Spanish Colonial Laws for the Philippines, the learned dissenter practically announces in the outset of his opinion a purpose to guess at the law on which his dissent is to be based.

In the Pacheco case (1 Wall., 282) it appears (p. 285) that as part of the "livery of seisin" the petitioner entered into the possession "by pulling up grass and making demonstrations as owner." Further than the fact of his citing the Pacheco proceedings as illustrative of "the usual legal form"

of getting possession of land, it does not appear whether Justice McDonough considers "pulling up grass" to be essential or not. Evidently he does not believe that the fact of our having gotten a deed to the land and having at once gone into possession of it, and having been there ever since cultivating the land, is enough.

Even in his unauthorized assumption "that the practice here (in the Philippines) was similar to that under which grants were made in other Spanish colonies" he adds, after the words just quoted *"and which grants contained similar conditions."*

Now the Pacheco grant, on which he relies, specifically required the grantee "to solicit juridical possession" from the proper judge. The language of this court as to the Pacheco grant, quoted by the Philippine judge (R., 195), is:

> *"The conditions annexed to the grant* (meaning, of course, *contained in* the grant) in the case at bar required the grantee to solicit juridical possession from the proper judge."

The deeds under which defendant in error claims *contain no such condition*. They do not require any further survey or measurement whatever. They simply describe the tract deeded, stating how it is bounded on its four sides and that it contains so many hectares, stating the number.

The reason of the Mexican law is clear. California was a wild and unsettled country then, and the Government wanted it settled. Under its law a man might, and did often ask for a concession or grant of say 10 square miles to be laid off to him by the Government surveyor in a specified territory or region of 100 square miles, giving the general geographical name of such territory or region. Of course he got nothing until the land was laid off by survey. The original concession was a mere permit to have the land laid off. Of itself it passed no title. The survey, etc., was a condition precedent to the vesting of title. On the other hand, Luzon Island, where the land now in dispute lies, had, at the time

these deeds were issued, been quite effectually occupied for several hundred years.

The next case cited in the dissenting opinion after Pacheco *vs.* The United States is *Bouldin vs. Phelps*, 30 Fed. Rep., 547. Attention is invited to the following extract therefrom, quoted on page 195 of the record:

> "There was no record made of the grant as re-
> "quired by law; the public record thereof, and not
> "the document delivered to the party, was the ef-
> "fective grant. There was no *juridical possession*.
> "The title, therefore, did not become definitely vested.
> "A grant can not perfect or complete the title where
> "anything remains to be done to perfect it."

Again we hear the ever-recurring note of the dissenting opinion, the apparent demand for *juridical possession*—possession obtained by order of some court based upon petition and satisfactory proof—as being essential to "the usual legal form" of obtaining possession of land sold by the Government. Evidently the title of defendant in error is not good, in the eyes of the dissenting justice, unless he complied with the laws of Mexico, which governed the acquisition of title to public lands in California prior to the cession thereof to the United States in 1846.

The only reply necessary to be made to this part of the opinion is to quote the eighth headnote from *Bouldin vs. Phelps*, in order to show that it has nothing to do with the public-land laws of the Philippine Islands:

> "By the Mexican system, under which public lands
> "were granted, *juridical possession* constituted in-
> "vestiture of title."

Counsel for defendant in error differ also with the author of the dissenting opinion in regard to the true intent and meaning of *More vs. Steinbach*, 127 U. S., 70, which he cites in support of his contention that the deeds from the Philippine Government, under which defendant in error claims, are invalid.

Attention is invited to what he quotes from and says about that case (R., 195-196). An examination of the report of the case cited shows that Steinbach and others, plaintiffs in the trial court and appellees in this court, claimed under a patent issued by the United States in 1874. More and others, defendants and appellants, claimed under a grant of the Mexican Governor of California to one Jimeo, prior to the cession of California by Mexico to the United States, July 7, 1846, on which said date the authority and jurisdiction of Mexican officials terminated. (*More vs. Steinbach*, 127 U. S., 80). The terms of the grant in *More vs. Steinbach*, like that in the Pacheco case, required a survey of the lands to be made by the Government surveyor and a formal putting in possession—juridical possession. In fact the opinion in *More vs. Steinbach* actually *cites* the Pacheco case in this connection. For lack of compliance with the said conditions contained in it, defendant's grant had clearly vested nothing in him up to the time the Mexican regime ended in California on July 7, 1846. He tried to remedy matters by fulfilling, on November 17, 1847, the conditions contained in the deed as to survey and getting placed in possession, invoking for that purpose the services of the American alcalde elected by the people. But this court held that it was too late to do that, as the American law of procedure in such matters went into effect in California on July 7, 1846.

> "The authority and jurisdiction of Mexican offi-
> " cials terminated on the 7th of July, 1846. On that
> " day the forces of the United States took possession of
> " Monterey, the capital of California, and soon after
> " occupied the principal portions of the country, and
> " the military occupation continued until after the
> " treaty of peace. The political department of the
> " government designated that day as the period when
> " the conquest of California was complete and the au-
> " thority of the officials of Mexico ceased. In this
> " matter the judiciary follows the political."
>
> "After that date no alcalde elected by the citizens
> " had any jurisdiction to deliver judicial possession.

> "This was distinctly held in the case of Fremont *vs.*
> "The United States, 17 Howard 542, 563."

Defendants sought to meet the decisive force of this ruling by invoking the doctrine that "the laws of a conquered or ceded country, except so far as they may affect the political institutions of the new sovereign, remain in force after the conquest or cession until changed by him," but the court held:

> "That doctrine has no application to laws authorizing the alienation of any portion of the public domain, or to officers charged under the former government with that power."

Clearly the grant under which defendants claimed had vested no title in them up to July 7, 1846, the date of the annexation of California, and it was too late, after that date, to invoke Spanish methods of procedure..

In the light of the foregoing, attention is now confidently invited to that part of the decision of this court which Justice McDonough seems to consider as holding that because a grant under a Mexican law giving the grantee a permission to locate and survey a claim, and entitling him in such event to official delivery of possession under the Mexican Government, vests no title until the conditions precedent are fulfilled, therefore a grant under Philippine law *containing no such conditions* is void.

The language of this court which he relies on held (R., 196):

> "That the grant under which they (defendants)
> "claimed to have acquired a perfect title conferred
> "none. The grantees were not invested with such
> "title and could not be without an official delivery of
> "possession under the Mexican Government; and
> "such delivery was not had and could not be had
> "after the cession of the country except by the Ameri-
> "can authorities acting under a law of Congress."

We now turn to the decision of this court in the Fremont case, as to which the dissenting opinion of the Philippine judge in the case at bar (R., 196), insists:

> "If that (Fremont's) case be in conflict with the "More case, *supra*, it (is) by implication repealed by "this later decision."

But the opinion in *More vs. Steinbach* cites the Fremont case *once and once only and then approvingly.* In holding that after July 7, 1846, the date of the annexation of California, "no alcalde elected by the citizens had any jurisdiction to deliver judicial possession," the opinion in *More vs. Steinbach* says:

> "This was distinctly held in *Fremont vs. The United States,* 17 Howard, 542, 563."

Again, the Fremont case purports to be and is a leading case on claims to California lands under Mexican land grants. And certainly when Mr. Justice Field, in 1887, rendered the opinion of this court in *More vs. Steinbach,* he was not ignorant of this fact. In the Fremont case, the opinion, delivered by Chief Justice Taney, begins thus:

> "The court have considered this case with much at- "tention. It is not only important to the claimant "and the public, but it is understood that many "claims to land in California depend upon the same "principles, and will, in effect, be decided by the judg- "ment of the court in this case."

On page 197 of the record in the case at bar, Justice McDonough's dissenting opinion quotes from what Chief Justice Taney said in the Fremont case about the Spanish grants of public lands in Florida and Louisiana prior to the Florida cession and the Louisiana purchases as follows:

> "But, until the survey was made, *no interest, legal or equitable, passed in the land.* The original concession granted a naked authority or permission and

> nothing more. * * * The examination of the surveyor, the actual survey, and the return of the plot were *conditions precedent,* and he had no equity against the Government and no just claim to a grant until they were performed."

After the quoted passage the opinion in the Fremont case proceeds to review the decisions of this court concerning the Louisiana and Florida land grants at length. It then repeats, in substance, the above ruling and adds:

> "The instruments under which they claimed were "evidently not intended as donations of land, as a "matter of favor to the individual, or as a reward for "services rendered to the public." * * * "up to "the time when Spain ceded them (the lands), the "parties had done nothing to accomplish the object, "or to carry out the policy of the Government. Be- "fore they could claim anything the survey was a "condition precedent." (See p. 555 of the Fremont case.)

Turning now from the Florida and Louisiana land grant cases, referred to by Chief Justice Taney in the language quoted, to the grant to Alvarado (from whom Fremont bought) the Chief Justice uses the language quoted on page 187 of the record in the concurring opinion of Justice Johnson (R., 187). He further holds, in the next paragraph after the one Judge Johnson quotes, that the Alvarado grant was not "a mere permission to make a survey—and return a plat—of the land he desires, with a promise from the Government that he shall have a title to it when these things are done." "But (p. 558) the grant, after reciting that Alvarado was worthy, for his patriotic services, to be preferred in his pretensions for his personal benefit and that of his family * * * proceeds in the name of the Mexican nation to grant the aforesaid tract." And the court specifically holds that a grant on account of patriotic services is "as firm and valid as if * * * purchased with money." Because the

original grantee from the Government in the case at bar paid for his deed in money at and before the sealing and delivery of the deed, the grant at once vested an immediate interest in him. Because he had rendered patriotic services to his country, Alvarado's grant placed in him, "as between him and the Government," (p. 558) an immediate vested interest "in the quantity of land mentioned in the grant."

It is axiomatic that a deed of gift based upon a good consideration is as binding upon the donor, and operates to pass title as effectually, as a deed of sale based upon a valuable consideration. A gift to a citizen from his Government "in consideration of the previous public and patriotic services of the grantee" is as clearly based upon a good consideration as a gift from a father to his son in consideration of natural love and affection. Justice McDonough fails to distinguish between grants of public land of this sort and concessions intended to carry out a colonization policy, containing permission to survey off and segregate from the public domain a specified quantity of land, coupled with a promise of a deed to such land when surveyed.

Referring to the penultimate paragraph of the dissenting opinion (R., 197), it appears that in the grant to Alvarado there discussed (which he sold to Fremont) the Mexican Governor who signed the grant waived the presentation of the preliminary sketch of the land sought along with the petition. His order granting Alvarado's petition required, as one of the conditions of the grant, that a survey and an authoritative sketch or plat be made and filed. This court held that this *laches* might have militated against Alvarado's rights, as against some more diligent grantee who should locate and survey off a part of the land, in case Alvarado should afterwards overlap him; *aliter*, as against the Government.

In regard to the prohibition in the Alvarado grant against the grantee's subsequently selling the land, Chief Justice Taney holds the prohibition invalid because forbidden by the then existing laws of Mexico (p. 564).

Justice McDonough seems to be quite positive in refusing to accept the Fremont case as signifying "that conditions of the nature discussed here (in the case at bar) were conditions subsequent." We confidently submit that we have shown that it did so signify. We do not claim that the Fremont case "turned" on that point alone, but we respectfully insist that it settled that point, and that More *vs.* Steinbach, *supra,* not only did not, as Justice McDonough suggests, "repeal" by implication the doctrine of the Fremont case as to conditions subsequent, but that it had not the slightest intention or purpose to question the wisdom and authority of that celebrated case, and that it left it as it found it, and as it still continues, the cornerstone of innumerable titles based on Mexican land grants in the State of California.

The doctrine therein announced was reaffirmed in *Hornsby vs. United States,* 10 Wall., 224. That case is most instructive in its application to the case at bar. Therein the several *kinds* of grant made under the Mexican Government are thus stated:

> "1st. Grants by specific boundaries, where the "donee was entitled to the entire tract described;
> "2d. Grants by quantity, as one or more leagues "situated at some designated place, within a larger "tract described by outboundaries where the donee "was entitled out of the general tract only to the "quantity specified, and
> "3d. Grants of places by name, where the donee "was entitled to the tract named according to "the limits, as shown by its settlement and possession, or other competent evidence."

As in the Fremont case, the grant involved in the Hornsby case was one of quantity within larger boundaries, the second class noted above, and as in the Fremont case the Hornsby grant contained the express condition, *inter alia,* that

"2d. They shall solicit the proper judge to give "them juridical possession by virtue of this decree, "and he shall mark the boundaries with the proper "landmarks."

Admittedly this was never done nor was the petition for the grant accompanied by the plat or deseño required by Mexican law. In commenting on all these objections and sustaining the validity of the grant this court broadly reaffirmed the doctrine of the Fremont case, holding, after consideration of some facts appearing in that case excusing application for juridical possession (p. 240):

"But independent of the considerations stated, it "is a sufficient answer to the objection to say, that "mere neglect to comply with the condition did not "of itself work a forfeiture of the grantees' right "under the Mexican law. The neglect of a grantee to "apply for or to take possession, if unreasonably pro- "longed, only left the land open to denouncement by "other parties. The interest of a grantee could not "be divested under the Mexican law any more than "at the common law, upon mere allegations or sur- "mises. Some formal and regular proceedings were "required to effect such divestiture, and under the "Mexican law these had their inception in what is "termed a denouncement by a party desirous of ob- "taining the land. An investigation then followed "whether or not the condition had been complied "with or so disregarded as to justify a decree of for- "feiture. Without such inquisition and decree the "title did not revert to the Government, nor was the "land subject to be regranted.

"The object of the colonization laws and regula- "tions of Mexico was the settlement of the vacant "lands of the Republic, and grants were usually made "to accomplish this purpose without other considera- "tion. But the public, as observed in the Fremont "case, 'had no interest in forfeiting them even in "'these cases, unless some other person desired, and "'was ready to occupy them, and thus carry out the "'policy of extending its settlements.'"

Certainly this doctrine must apply here where the land was (1) *purchased* for a valuable consideration paid the former Government; (2) was granted by specific description, and (3) where possession in fact, under such title, is here expressly found.

The assumption of Justice McDonough (R., 194) "that the practice (as to granting titles to public lands) here (in the Philippines) was similar to that under which grants were made in other Spanish colonies," and that, such being the case, the grants in the case at bar were defective because the purchaser from the State had never obtained "juridical possession," was not an unnatural mistake. At one time, in the Sixteenth Century, Spain had one set of public land laws for all her colonies. These laws appear in the form of a "new Compilation of the Laws of the Indies," including both East and West Indies, published at Madrid in 1682. They were made available to this court and the members of its bar by the valuable compilation and translation of "Spanish Colonial Land Laws" prepared in 1828 under the direction of President Adams, by Mr. White, special assistant attorney for the Government in the Florida land grant cases.

In Lib. IV, Tit. 12, Law 17 of the "Laws of the Indies" (White's "Spanish Colonial Laws," pp. 42-3), we find provisions made for the courts ("Audiences" — Sp. "Audiencias") to intervene in the formalities incident to granting public land to private individuals. However, this same Lib. IV, Tit. 12, Law 17 of the "Laws of the Indies," is quoted in a compilation of the Philippine Public Land Laws, published by an eminent Spanish jurist, Don Miguel Rodrigo Berriz, at Manila, in 1886, called "Guide for the Purchaser of Public Lands in the Philippine Islands." ("Guia del Comprador de Terrenos Baldíos y Realengos en Filipinos"); and immediately after quoting said "Law 17," Senor Berriz makes this note:

> "The courts no longer intervene in the disposition and sale of public lands, such matters being now at-

tended to by the Forestry Bureau, the Revenue Office, and the Treasury Department."
Berriz' Guide, &c., p. 8.

And, again, on page 31 of Berriz' "Guide," is published a circular letter bearing date August 26, 1881, which was sent out from Manila to all the provincial governors, and reads, in part:

> "Bear in mind that all proceedings for the setting "apart of public lands, *absolutely all*, are *administra-* "*tive matters*, with which the court (of your prov- "ince) has nothing to do, and consequently can ex- "act no fees in connection therewith from the parties "interested."

And again, on page 419, *et seq.*, is another circular dated September 30, 1881, dealing with certain difficulties which have arisen in the practical operation of the Royal Decree concerning the sale and setting apart to private persons of portions of the public domain. It divides these difficulties into two kinds, the first being connected with the probable failure of the natives to apprehend the advantages offered by the law, and a consequent failure on their part to take any action seeking to avail themselves of its provisions. Turning then to the second class of obstacles met with, the circular proceeds:

> "First and foremost among the obstacles (of this "kind) which presented themselves, were the ex- "penses which the natives supposed would be en- "tailed by the proceedings; and as to this, Your Ex- "cellency has already been advised that these appli- "cations are to be handled exclusively through the "executive departments of the Government, and that "therefore they would involve no expense and would "entail no fees. The word *'property,'* the phrase "'legitimate the (title to the) property,' and the cir- "circumstance that questions involving the trial of "title to lands are cognizable by the courts, have "doubtless caused some persons to suppose *errone-* "*ously* that the petitions and proceedings, and (the

> "putting the applicant in) the *possession*, under the
> "public land laws, would be judicial acts, etc."
> Berriz' Guide, etc., p. 420.

And, again, in the Royal Order of October 26, 1881, page 70, paragraph 4:

> "No fees shall be collected for the proceedings put-
> "ting the applicant in possession of the lands granted,
> "but such proceedings shall be had free of charge
> "through the administrative arm of the Govern-
> "ment."

On page 103 of Berriz' "Guide" appears a decree of the Treasury Department (Intendencia General de Hacienda), in favor of Messrs. Baer, Senior & Co., merchants of Manila, dated October 17, 1882, which refer to certain lands lying in Isabela Province, "which were awarded (to Baer & Co.) at the public auction held on September 6 last." This declares a policy and purpose to construe the laws looking to the disestablishment of the Government monopoly on tobacco liberally, alludes to certain untoward events which have recently happened in Isabela Province, recites that "for the Central Treasury (at Manila) to accept payment for land acquired in the provinces" will save unnecessary delay, and finally

> "authorizes the purchasers of public lands to pay into
> "the Central Treasury, if they desire, the price of
> "the lands that may have theretofore been awarded
> "to them, such funds to be regarded as remittances
> "from the sub-treasury in the province where the
> "land lies."

Berriz' "Guide for the Purchaser of Public Lands in the Philippines," purports in its alternate title to be a correct "general compilation of the Royal Circulars, Laws, Ordi-"nances, Regulations, Instructions, Royal Decrees, Decrees, "Royal Orders, Orders, Superior Decrees of the Governor-"General, Decrees of the Treasury Department and of the

"Central Directorate of Civil Administration, pertinent to "the subject" to the number of about two hundred and thirty, stretching over the period from 1682 to the date of the publication of the book, 1886.

There is no index to the work, nor does it attempt to digest and codify this mass of legislation. Often a general comprehensive law appears which was evidently intended to supersede an earlier law on the same subject; yet the later law instead of striking from, amending, or adding to, the old law, simply concludes with a general clause repealing all law in conflict with itself.

We therefore add the following pertinent extract from Berriz which relates to sales where the property (as in the deeds in dispute) was appraised at less than $200, relying for the rest upon the uniform decisions of this court, that it will give full faith and credit to recitals in such a document of compliance with the legal formalities precedent to the issuance of it. On page 645 of Berriz's Guide appears a royal order dated June 11, 1884, which recites that it is responsive to a petition addressed to the Madrid Government by the General Tobacco Company of the Philippines (the defendant in error). It declares that a certain royal decree of the year 1883 (which was the year *after* the one in which the deeds in dispute in the case at bar were issued) concerning grants of titles to public lands was not retroactive. Immediately following this royal order is a decree of the Philippine Treasury Department, made pursuant to it, which decree, while it only affects applications under the public land laws for parcels appraised at more than $200, nevertheless recites that

> "according to the legislation anterior to the said "regulations (of 1883), the said lands (meaning "public lands) were *granted directly to the de-* "*nouncers, upon payment of the purchase price and* "*the cost of the proceeding, where this amount was* "*less than $200*, according to the appraisement, and "were sold at public auction to the highest bidder, "where appraised at more than $200."

The consideration of each and every one of the seven deeds now in question is less than $200. Clearly, the formalities of the Philippine public lands at the time of the execution of these deeds were extremely meager as to tracts approved by the Government's officials at less than that amount.

II.

Taking up in order the several assignments of error, and the brief in support thereof, we submit:

A.

The validity and regularity of the sale of these lands by the Spanish Government, and the deraignment of title in fact from the original grantors to the present defendant in error, is not assailed. In other words, the genuineness of the transaction is not disputed. The sole contention in this regard is that the formal instruments of grant from the Spanish Government were not, in the view of counsel, properly recorded. And in that view, as we understand their argument, the contention is narrowed to the single proposition that the certificate of registration appearing on each of the deeds (Exhibits 1-7) is evidence only of the recordation of the deed from the State's grantee to Casal, through whom, in turn, the defendant in error deraigns title, and not evidence of the recordation of the original grant from the State to its original purchaser.

Answering that contention, it should be noted—

1st. That the deed from the State's purchaser to Casal, in each instance, directly refers to the deed or grant from the Government, and recites:

> "In consequence he grants and conveys to Sr.
> "Casal the ownership, rights and actions which he
> "has or may have in the said land, authorizing him
> "to take possession thereof and to dispose of it at his
> "will, as of a thing lawfully acquired, to which end
> "he now delivers him the title deeds, undertaking to

"do the same with respect to the transcript of this "present instrument, as soon as the same is copied, "thus effecting the symbolic delivery of the said "land, which he declares to be free from all incum- "brances, binding himself to warrant and defend the "same at all times" (R., 27, 29, 32, 34, 37, 39, 41).

2d. Under the mortgage law of the Philippines established in 1893 by Spain it was provided in article 20 as follows:

"To record or enter instruments transferring or "encumbering the ownership or possession of real "property or property rights, the interest of the per- "son conveying it, or in whose name the transfer or "encumbrance is made, must be previously re- "corded.

"Registers shall refuse to record said instruments "as long as this requisite has not been complied with, "being directly responsible for the damage they may "cause third parties by the violation of this pro- "vision.

"However, they may record without this requisite "all deeds executed by persons who have acquired "an interest in the same property before the day on "which the mortgage law was put into operation, "provided they justify their title with trustworthy "documents, and the same interest is not recorded "in favor of another person; but in the record re- "quested the essential circumstances of said title will "be indicated, which shall be taken from the docu- "ments necessary for this purpose."

Now, these instruments of conveyance from the original grantees of the State to Casal were so recorded in 1898, and following the clear provisions of article 20 of the mortgage law just quoted, it is plain the register could not thus have recorded the conveyances from such original State grantee to Casal without having had produced to him the original title or grant from the Spanish Government to Casal's grantor.

It will be noted that the original grant from the Spanish Government to its grantee and the date of conveyance from the latter to Casal appear in this record (Exhibits 1-7) with each title deed from the Government attached to and forming part of the deed from such State grantee to Casal. Hence, having in view this provision of the mortgage law just quoted, it is perfectly plain that the register's note upon each of these exhibits is made in complete accord with these requirements of the mortgage law. He certified, in legal effect, that the parcel of land covered by such conveyance from each grantor to Casal forms part of the Hacienda de San Luis y la Concepcion, as recorded in the two certain volumes of records therein specifically described by number and page.

So far, then, as recordation is concerned, this title was so recorded years before the present action was brought—this complaint having been filed in 1902.

Otherwise stated, we may justly presume that the register, in performance of his plain duty, refused to record a deed from the State's grantee to Casal until the original title deed from the State to such grantor was produced before him. And taking the exhibits together as we find them in this record, the reasonable and proper presumption is that such original deed or grant from the Spanish Government to its purchaser, and the conveyance from such purchaser to Casal, were necessarily produced *together* before the Register of Titles, and by him accepted and recorded as a complete chain of title, showing the deed or grant from the Government to its purchaser, and the deed, in turn, from such purchaser to Casal. This conclusion accords with the requirement of the mortgage law quoted *supra*, as well as with the settled rule of universal application which accords to the recording officer the performance of plain duty. That just conclusion we submit answers all the technical argument and objection urged against the defendant in error's title under this head.

B.

It is further contended that the grants from the Spanish Government to the original purchasers are invalid, because it is assumed that the requirement that the instrument should be entered in the Department of Isabela was a condition precedent which, if not performed, would render the grants null and void. Whilst we have discussed this point with some fullness yet, in direct response to the brief for plaintiffs in error, we add:

All of the cases arising in Florida after the Spanish cession thereof, and ruled in this court, which are cited upon the opposing brief, relate to mere concessions or promises of grant, to be made complete on the performance by the petitioner of prescribed specific acts or conditions. A number of these cases are shortly styled "Mill cases," wherein the petitioner asked for the privilege of erecting a saw mill and the right to cut timber from a specified area, the concession being made and in terms reciting that it should not take effect, or, to use the language of one case, "until he builds said mill this grant will be considered null and void." In this series of cases, where this court found the condition had not been fulfilled, or even attempted, it was held that the Treaty of Cession did not impose upon our Government any greater obligation than that assumed by the Spanish Government, and that hence entire failure to perform the condition at all, prior to the change of sovereignty, defeated the grant under Spain, and with like necessary effect under this Government. But in these cases so freely cited upon the adversary brief, the court is careful to draw the distinction between concessions of this nature and actual grants in fee, as illustrated by the Aredondo case, 6 Pet., 691, and others cited *supra,* wherein requirements respecting the land were held not to defeat the transfer of title, which had been made in terms by the instruments of grant from the former sovereign.

We do not burden this brief with extended citations from these cases, because, in our view, the case of *McMicken vs. United States* (97 U. S., 204) presents in clear expression the distinction, which is obvious, between a grant founded upon a consideration already paid (as here), and a mere concession or promise of a grant, dependent upon future acts of the petitioner or grantee. In the McMicken case the only title paper presented was a warrant or order of survey. Commenting thereon this court said (p. 206):

> "This is the only title presented, and neither sur-
> "vey nor settlement nor improvement of any kind
> "appears ever to have been made on the part of the
> "petitioner, or any one claiming under him."

It did appear that after the cession to the United States, the claimant attempted to obtain such survey. The court considers the various acts of Congress relating to the settlement of private land claims under the Florida cession, and the confirmation thereby of *imperfect* claims, and as the order for survey in the McMicken case was the only basis of claim, and finding such survey had not been made, the court ruled against the claim, saying:

> "But the examination of the surveyor, the actual
> "survey, and the return of the plat were conditions
> "precedent, and he had no equity against the Gov-
> "ernment, and no just claim to a grant until they
> "were performed; *for he had paid nothing, and done*
> "*nothing, which gave him a claim upon the con-*
> "*science and good faith of the Government.*"

The opinion then proceeds to draw the sharp distinction between a grant of title, citing *Chouteau's Heirs vs. United States*, 9 Pet., 147; *United States vs. Arredondo et al.*, 6 Pet., 691; *United States vs. Sibbald*, 10 Pet., 313; *Hornsby vs. United States*, 10 Wall., 224 (quoted fully *supra*), and adds:

> "There is nothing in any of these cases inconsist-
> "ent with the assertion of the forfeiture in the case
> "before us. Here no title was granted: nothing but

"a permit to inhabit and cultivate as preliminary to "a grant. It might have ripened into an equitable "title had the conditions been fulfilled, or even if a "fair effort had been made to fulfill them, or if any "plausible excuse could be offered for their non-ful-"filment. But no attempt even appears ever to have "been made to fulfill them; and the Government "proceeded to make other disposition of the land. "There is no need of any more formal assertion by "the Government of its right to resume the proprie-"torship," citing cases.

We do not here extend the discussion, because in the foregoing part of this brief we have endeavored to show the sharp distinction always maintained in the cases ruled by this court between grants of land which, in terms, conveyed the fee, and those concessions or warrants of survey, or other inchoate evidences of title which could not ripen into complete grants of the fee until the conditions therein expressed had been performed. It would hence extend this brief to an undue length to here repeat or attempt more extended review of the cases.

The extended argument upon the opposing brief seeks to show that the language of the grant from the State, in directing entry thereof in the District of Isabela "under pain of nullity," means that if not done the grant *ipso facto* becomes null. But we submit that it is precisely as ruled by the Supreme Court below, a matter within the control of the Government in proceeding to nullify the grant and to return the purchase money paid therefor. And this ruling, concurred in by the native judges of that court as declaring the civil law of Spain applicable in the Philippines, is in precise accord with the doctrine of the civil law from the same sources, in respect of Spanish and Mexican grants in California.

This is illustrated by the language of Chief Justice Taney in the Fremont case and of Mr. Justice Field in the Hornsby case, which we have fully quoted *supra*, and which is to the effect that the grant continues unaffected unless the

land be denounced by another and upon judicial inquiry a forfeiture of the previous grant is thereon declared. For it must be distinctly recognized that in present case these lands were purchased as part of the public domain from the Spanish Government and the Government price paid therefor. The trial court has found that the original grantee and the present defendant in error, who deraigns title from him, were in actual possession thereunder; each court as distinctly also found that the lands here in suit are embraced within the description of these grants from the Spanish Government, and form part of the defendant company's plantation. None of the defendants assert any adversary record title. It is but the plain truth to add that several of them, when put upon the stand, admitted in terms that they did not claim title under the Government. They were simply squatters, whose occupancy could in nowise hamper the right of the former Government to sell its public domain, and whose trespass thereon as against the possession and title of the rightful owner could not be pleaded either under Spanish or American law as defeating the legal title so acquired from the sovereign.

Indeed, it is plain that if the title of the defendant in error were now rejected it would result in declaring these lands to be part of the public domain to which the United States had succeeded under the treaty or cession, and would not validate the possessions of these plaintiffs in error. But it would, we submit with all respect, be a present denial of a title made by the Spanish Government, based upon a money consideration and followed by actual possession under such form of grants at the time of the cession of the islands from Spain to the United States.

Unlike the treaties by which Louisiana, Florida, and California were acquired, the United States has not, in respect of the Philippines, undertaken to investigate the sources of original Spanish title, or by boards, courts, or otherwise (as in the other instances mentioned) sought to compel the

owners of lands to submit their titles for adjudication and confirmation under this Government. On the contrary, by article VIII of the Treaty of Paris, between Spain and the United States, the just rights of property of individuals and corporations, both civil and ecclesiastic, are expressly recognized. That article is as follows:

"ARTICLE VIII.

"In conformity with the provisions of articles I, II and III, of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands in the West Indies, in the island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways, and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

"The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the archives of the Peninsula. Where any document in such archives only in part relates to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect of documents in the archives of the islands above referred to."

We have, then, in the case at bar, a sale of land in 1882 by the Spanish Government for a money consideration,

the genuineness of the transaction and the title passed from Spain thereunder unchallenged; the possession of the original grantee and its successor in interest judicially found. Upon this record the Supreme Court of the Philippines decided that the defendant in error is in fact and law the owner of the title in fee, and as such, of course, entitled to the corresponding possession, use and enjoyment of the property. The plaintiffs in error meet all of this only with the assertion that, in their view, a condition in respect of recordation was a condition precedent and, in their view, the recordation of the titles in the proper registry of Isabela in 1898 was not sufficient to meet such condition. And on this argument alone this court is asked to repudiate the title made by the Spanish Government and, in legal effect, declare these lands to be still a part of the public domain to which the United States has succeeded, notwithstanding the admitted fact that the former Government sold these lands and received the full purchase money therefor.

It is argued that because in 1895 the register of titles refused recordation to these instruments they could not thereafter be lawfully registered. That is a plain error—*one of fact.* None of the conveyances (Exhibits 1-7) from the Spanish Government and the deed, in turn, from such grantee to Casal were denied such registration. They appear to have been offered for recordation on September 17, 1898, and to have been then duly registered. The recordation which was refused was of title shown in Exhibit No. 8 (R., 43, 52). At the bottom of page 51 appears this statement:

> "The inscription of the preceding document is
> "not admitted by reason of the fact that it is de-
> "fective with respect to the personality of the cor-
> "poration mentioned therein, and this being a defect
> "which does not appear to be subject to correction,
> "no preventive annotation can be made thereof.—
> "Ilagan, the ninth day of March, one thousand eight
> "hundred and ninety-five.—Juan Conde.—A seal
> "reading 'Registry of Property'—Isabela."

Now, in Exhibit No. 9, which is a later conveyance of the same general property included in the plantations of the defendant in error, there appears at pages 54-55 the recital of the corporate acts and capacity of the defendant in error. This instrument, therefore, cured whatever defect, if any, on which the recordation of the former instrument (Exhibit 8) was refused. And at the end of Exhibit 9 appears the formal certificate of inscription or registration on September 18, 1898, in the proper registry. Hence, as matter of law, the opposing argument, which seeks to deny the right of recordation after the defect, if any, has thus been cured by a new and formal instrument, must wholly disappear, and we need not follow counsel with further discussion under this head. It was simply the case of an alleged defective instrument or deed, which being cured (if cure was needed) by a new and complete instrument, the latter instrument was properly entitled to registry and recordation was duly accorded it. The assumed defects in the original instrument (Exhibit 8), having been thus cured, that instrument was likewise entitled to recordation and was so recorded on the same date. Certainly, no objection can be made thereto by these plaintiffs in error or any one else, and as certainly no other or sound objection has been or can be made to the recordation of both of these documents.

As will appear from the certificates of recordation attached to Exhibits 8 and 9, and which cover the entire holdings of the defendant in error, they were duly recorded and the volume and pages of such record given in detail.

Turning now, to Exhibits 1 to 7, inclusive, it is plain that the certificate of the same register on each of such original grants and conveyances from the original grantor to Casal, was properly made in noting thereon that same form part of the Hacienda de San Luis y la Concepcion, recorded in the same volumes and pages as are given in the certificate of registration of Exhibits 8 and 9, which cover all of the description and titles of the defendant in error. This form

of certificate in respect of recordation as to these titles (Exhibits 1-7) is in precise accord with the provisions of article 273 of the Regulations under the Mortgage law which provides:

> "ART. 273. If the entry or record of several estates "or rights has been made, all of which are contained "in one instrument, the memorandum made at the "foot thereof shall state precisely and laconically "what has been done, noting also at the margin of "the description of the instrument of each estate or "right, its number, folio, book, and number of the "record or letter of the entry which has been made "regarding the same, without collecting any fees for "these statements."

Therefrom it will be seen that the Register was directed to take notice of these several instruments which record title as to part in the manner in which he did so note thereon. It was hence clearly done in accordance with the law and regulations. The documents presented show clear and direct title from the Spanish Government, and with the instruments (Exhibits 8 and 9) show clear chain of title from the sovereign, in precise accord with the requirements of article 20 of the Mortgage Law of 1893, which we have fully quoted above.

C.

The objection that the defendant in error as plaintiff, failed to prove title to the entire Hacienda de San Luis y la Concepcion, involves only a question of fact. It was so affirmatively found as such both by the trial court and the Supreme Court of the Philippines (R., 122 and 172). It is hence conclusive here. The suggestion that the boundaries thus described in the complaint do not correspond with the title deeds to the company (Exhibits 8 and 9) is, however, incorrect. Those exhibits are very lengthy, but careful reading thereof will disclose that there is no discrepancy in description between the complaint and title deed Exhibit 8.

The title deed Exhibit 9 in terms explains the apparent discrepancy in the statement of aggregate quantity, as given in Exhibit 8, and the enlarged area, stated in Exhibit 9, the difference being only that the latter deed conveyed all of the grantor's interest including the additional area acquired by him and in turn conveyed to the defendant in error—an explanation fully made in accordance with Spanish custom and set out in Exhibit 9 (R., 60, 61). The Supreme Court below holds all these instruments properly recorded and demonstrating full title in the defendant in error here (R., 175).

D.

The assertion of error in the trial court admitting in evidence all documents subject to subsequent determination of their legal value is without force. The court sat without a jury and was hence judge of both law and fact.

The assertion that the trial judge warned defendant's counsel "from stopping witness in his testimony," and hence committed error, is met by that court's statement in overruling motion for new trial with direct denial (R., 167), the court saying:

> "No one has been prohibited from questioning or
> "cross-questioning any witness."

The objection to Exhibit No. 13 (R., 64) being a contract between the plaintiff company and a number of native farmers because not plead in the original complaint is equally without force. It was introduced to show "that the com-
"pany had exercised acts of ownership on the Hacienda of
"San Luis y la Concepcion, and also to prove that the other
"defendants, whose names do not appear in the said docu-
"ment, were not at the date it was executed in occupation
"of the lands within the boundaries of the hacienda—that
"is to say, that their trespass is of recent date."

(Objections to Bill of Exceptions, R., 138, 139.)

For such purpose it was clearly admissible as part of the *res gestæ*, and as supporting the claim of title made by the

plaintiff company. Nor is it material to show that the lands to which the contract refers "are the same as those in litigation." The *point* to which this proof was addressed was to show that the signers of this contract who attorned to the company, were upon the company's lands held under the same title as those here in dispute, and taken with the oral evidence showed that the signers thereto were *all* the persons in possession of separate parcels of the larger estate owned by the company at the date of its execution—February 29, 1896 (R., 64).

The assertion of error in the trial court's denial of the motion of plaintiffs in error for an order directing the records of the Registry of Title to be brought into court for inspection and examination is without force. Nor is the statement of opposing brief that "defendants denied the genuineness of Exhibits 8 and 9 and insisted that they were fraudulent and forged" (R., 83 and 119) supported by any such recitals in the record. Inspection of pages 83 and 119 does not disclose any ground assigned for the motion. It was hence plainly within the discretion of the trial judge to deny the motion even though he might have erred in applying Article 225 of the Mortgage Law forbidding the removal of such books from the Registry, a point we by no means concede. The statement of the opposing brief, page 42, as to the irregularities apparent on the original Registry find no support in the record, and certainly were not suggested to the trial court as the basis for such motion. As the trial court was the sole judge of the law and the facts in the case, it was perfectly competent for him to make his own examination, and his admission of the proof of title, as presented by the original plaintiff, is conclusive that the trial judge was satisfied that the registration thereof was in all respects genuine, and, to use the language of the court—

> "this, apart from the fact that counsel for the de-
> "fendants not having formally denied the authen-
> "ticity of the signatures, nor having expressed and
> "declared that they are falsified, must be held to have

"admitted their authenticity, inasmuch as on the "other hand they are authorized by the official seal "of the Registry" (R., 124).

The final contention of the opposing brief that it is impossible to stretch the area comprised within the seven grants from Spain (some 800 hectares) into 3,900 hectares claimed in the complaint, is readily answered. The action was brought to recover possession of that part only of the plantation covered by the title shown from Spain in Exhibits 1 to 7, inclusive. Exhibits 8 and 9, and the accompanying map, Exhibit 10, to which Exhibit 8 clearly refers (R., 48), did disclose the entire out-boundaries of the plaintiff's estate. Both the trial court and the Supreme Court below find the land here in suit within the boundaries of the plaintiff's estate. It was hence only necessary to prove title in fee to the actual area involved in this suit to justify judgment for possession.

We may pertinently add that neither the parties litigant, their counsel, nor the trial court, found any difficulty in identifying the several parcels thus held in several possession by these defendants, nor was the sufficiency of the description of the premises challenged in the separate answer of any defendant, and the objection now urged in the court of final review on this point can have no existence in law, because standing wholly in conflict with the controlling facts in that regard, as found by the courts below. It is plainly an after thought.

It is manifest that the case for plaintiff in error stands wholly upon extreme technicalities. The purchase from Spain for money consideration, the formal deed of title thereto from the Sovereign, and the deraignment of such title to defendant in error stand as incontrovertible facts and are so judicially found. But the point is insisted upon that it does not affirmatively appear how possession was taken under the original grants from Spain. It is hence insisted that our title must fail because the manner of possession (our pos-

session being found as a fact)) is not disclosed. We submit, a grant in fee from the former Sovereign, and based upon a consideration admitted as received upon its face, cannot be judicially destroyed upon such ground.

Nor is the contention that the grant from Spain is null and void because of assumed defects in the original recordation thereof sound in any proper view.

In the first place, such deeds all disclose the previous application to purchase, the ascertainment of values, and the payment of the Government price. These recitals in the instrument conclude with the declaration that because thereof—

> "*I issue this title, so that by virtue thereof the said*
> "*Doroteo Faustino may be declared the lawful owner*
> "*of the said land.*"

Then follows the requirement that

> "This title shall be entered in the Central Admin-
> "istration of Government Monopolies and subse-
> "quently presented to the politico-military govern-
> "ment of Isabela de Luzon under pain of nullity if
> "the contrary is done, so that it may be entered in
> "that government and possession may be given in
> "the usual legal form."

Opposing counsel read the words "under pain of nullity" as absolute in declaring *ipso facto* failure of title. But such is *not* the just meaning to be applied thereto. The land had been purchased and paid for; the deed had been passed; the interest of the grantee had plainly vested. The words should therefore be read in the sense that if the subsequent proceedings required were not had, the Government reserved the right to thereafter nullify the grant upon the denouncement of the land by another. This principle of the civil law is plainly set forth in the Fremont and Hornsby cases in this court, fully cited in foregoing pages of this brief.

It accords also with the legal definition of the word "nullity" in the civil law, as set forth in Escriche's Law Diction-

nulidad

ary (Diccionario Razonado de Legislacion y Jurisprudencia, Paris, 1852), in its article on the word "nullity" ~~(nullidad)~~, which after setting forth with great nicety the difference between "nullity" and "rescission," concludes thus—

> "But in spite of these differences between the two, "the words 'nullity' and 'rescission' are sometimes "used interchangeably."

It must be remembered that these titles stood without challenge from the Spanish Government for more than seventeen years before the cession of the Philippines to the United States. Actual possession thereunder is found as a fact in the present case; the title is traced from the Spanish Government, *as a matter of record*, to this defendant in error. These facts are judicially found by both courts below. The learned Chief Justice of the Supreme Court of the Philippines (a Filipino lawyer of distinguished ability), and whose opinion is concurred in by his Filipino associates has held (R., 173):

> "The defendants did not present any title deeds, "nor did they prove an adverse possession on their "own behalf sufficient to overcome the recorded title "deeds which the plaintiff presented in support of "the complaint.
>
> "After the inscription of title deeds in the Register "of Property, the only owner of the recorded prop- "erty is the one who appears as such on the books of "the Register until the record is canceled by a final "judgment. There is no reason for ordering the "cancellation of the inscription unless this relief is "prayed for and proof is made of a better right on "the part of some other person who claims to be law- "ful owner or possessor. In this case there has been "no demand for the cancellation of the inscription "in the Registry of the Hacienda of San Luis y La "Concepcion in favor of the Compania General de "Tabacos. It has been alleged that the inscription "is defective, but no person entitled to maintain an "action for the purpose has instituted proceedings

"for the cancellation of that inscription. As long "as the inscription subsists it must produce all its "effects.

"To allege the nullity of the original deeds ex- "ecuted by the Spanish Government in favor of the "original grantees of the lands in question is to "allege the nullity of the contract entered into be- "tween the Spanish Government as grantor and them "as vendees, for the titles are simply evidenciary of "the sale for a certain consideration of a specific "thing. Under the provisions of article 1302 of the "Civil Code, the action for the annulment of con- "tracts can only be maintained by those who are "bound, either principally or subsidiarily, by virtue "thereof. The defendants not being persons bound "either principally or subsidiarily by virtue of that "contract of sale between the Spanish Government "and those original grantees they cannot maintain "the action of nullity of which they seek to avail "themselves as a defense in this suit. And it is logi- "cal that it should be so. The nullity of an obliga- "tion being declared, the contracting parties must "reciprocally restore the things which have been the "object of the contract (Art. 1103). If the nullity "of the title deeds referred to should be declared in "conformity with the contention of the defendants, "the lands should be restored to the Spanish Govern- "ment and the price paid for them should be restored "by that Government to the original grantees or "their *or their* successors. It would follow that the "lands in question could not remain in the possession "of the defendants, because they would have to be "restored to the vendor, nor could the latter be com- "pelled to restore the price, not having had an op- "portunity to be heard in this suit."

The principle thus applied by the court below is in full accord with the American law, for many decisions of the court affirm the rule that the grant or patent from the United States can only be annulled at the direct suit of the Government.

We submit that such clear exposition of the Spanish law of the Philippines covers all of the case here open to judicial review, and with resulting affirmance of the judgment of that court.

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Attorneys for Defendant in Error.

TUPIÑO *v.* LA COMPANIA GENERAL DE TABACOS DE FILIPINAS.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 148. Argued April 14, 15, 1909.—Decided May 24, 1909.

Distinct judgments in favor of or against distinct parties, though in the same record, cannot be joined to give this court jurisdiction.

While in case of joint entry and ouster, where the answer of all defendants takes issue without setting up separate claims to distinct parcels, and the judgment for recovery of possession is against all defendants jointly, the measure of appellate jurisdiction is the value of the whole land, *Friend* v. *Wise*, 111 U. S. 797, where there is no allegation of joint ownership or joint possession, and the controversy with each defendant relates to a separate and distinct parcel, and judgment is rendered separately, the measure as to each defendant is the value of his separate parcel. *Tupper* v. *Wise*, 110 U. S. 398. Nor does this court have jurisdiction in such a case if the judgment

were jointly against the defendants for damages where the total amount awarded is less than the jurisdictional amount.

Writ of error to review 2 Philippine, 142, dismissed.

THE facts are stated in the opinion.

Mr. John C. Gittings, with whom *Mr. William Steele Grey* and *Mr. Justin M. Chamberlain* were on the brief, for plaintiffs in error.

Mr. Aldis B. Browne, with whom *Mr. Alexander Britton*, *Mr. W. A. Kincaid* and *Mr. A. H. Blount* were on the brief, for defendant in error.

MR. JUSTICE MOODY delivered the opinion of the court.

The defendant in error brought this action for the recovery of certain lands, in the Court of First Instance of the Philippine Islands, against eighty-four persons, who are now the plaintiffs in error. The prayer of the complaint was for restoration of possession, for damages and an injunction against further disturbance of the plaintiff's right. The Court of First Instance rendered judgment for the plaintiff, awarding the relief prayed for, and the judgment was affirmed by the Supreme Court of the Philippine Islands. The case is now here upon writ of error, accompanied by a large number of assignments of error. The defendant in error has moved to dismiss the writ for lack of jurisdiction of this court to entertain it, and that motion must first receive consideration.

The jurisdiction of this court is rested by the plaintiffs in error solely upon the ground that the value of the real estate in controversy exceeds the sum of $25,000. Section 10 of act approved July 1, 1902, part 1, 32 Stat. 691, 695. The disposition of the motion to dismiss turns upon the question whether, within the true meaning of the statute, land of the value of $25,000 was in controversy. In the solution of this question it is useful to examine the pleadings, the course of the trial and the judgment.

The company alleged itself to be the owner of lands known as the Hacienda de San Luis y la Concepcion, having certain defined boundaries and an area of some four thousand hectareas. The complaint further alleged "that the defendants above named, for more than one and less than six years ago, illegally seized and continued to hold certain portions of the said property," having an "area of four hundred and forty-six hectareas, seventy-nine areas and four centiareas as to the fields, and four hectareas, approximately, as to the lots on which their houses and warehouses are built, distributed among distinct and separate parcels, but all within the perimeter of the said estate above described, and for a better understanding thereof the following statement is given of the parcels held by each one of the defendants." There then follows eighty-four separate descriptions of the separate holdings of each of the defendants. The case of Miguel Tupiño is agreed upon by the parties as typical of the others, and the allegation with respect to him is, "Miguel Tupiño has a lot of six areas with a dwelling and two warehouses thereon, and two fields, containing four hectareas and fifty areas and two hectareas and twenty-five areas, respectively." Then follows an allegation that "the plaintiff has been damaged in the sum of nine thousand Mexican pesos by reason of the unlawful detention above described," and the complaint closes with the prayer before stated.

Each of the defendants filed separate answers. The answer of Tupiño may be taken as a type. In it he denies the title of the plaintiff and that it suffered the damages alleged; denies, specifically, that the plaintiff had a record title to the portion of the land described as possessed by him; denies that that portion of the land was situated within the boundaries of the Hacienda de San Luis y la Concepcion; denies that the plaintiff is the owner of the portion of the land described as possessed by the defendant or any part thereof, or that the plaintiff has ever been entitled to the possession thereof; denies that the plaintiff has any interest in the portion of the land

described as possessed by the defendant or ever has had any; denies that the defendant has unlawfully withheld from the plaintiff the portion of land described as possessed by the defendant.

In the opinion of the Judge of the Court of First Instance he describes the defense in part as being "That each and every one of them (the defendants) is the owner of the parcel of land occupied by him, because it has been cultivated and possessed by some of them for more than ten years and by all of them for more than one year."

After the Supreme Court of the Philippine Islands had rendered its judgment the defendants made a motion for a rehearing, in which they complained that the court had overlooked an assignment of error in assessing damages jointly against all the defendants, and said, in this connection, "inasmuch as each of said defendants is alleged by plaintiff, and found by the trial court, to be occupying a distinct and separate parcel of land, with no privity or community of interest with his codefendants, and each of said defendants has filed a separate answer for such distinct parcel and maintained a separate defense."

It is very clear, although the plaintiff claimed under a single title all the land occupied separately by the various defendants, that the action itself was not against the defendants as joint disseisors, but was an action against each of them separately as the holder of a distinct parcel or parcels of land. There was no allegation, in either the complaint or the answer, of joint ownership or joint possession or joint action of any kind. The proceeding, in effect, consisted of eighty-four separate and distinct actions against the eighty-four defendants. The complaint alleged that each defendant was in possession of a separate and distinct parcel of land described separately, however inadequately. The answer of each defendant, while denying *in toto* the title of the plaintiff, in other respects related solely to the tract of land alleged to be unlawfully held by that particular defendant. Undoubtedly, where a complaint al-

leges a joint entry and ouster, and the answer takes issue, without setting up separate claims to distinct parcels by the several defendants, and the judgment for the recovery of possession is against all the defendants jointly, then the measure of appellate jurisdiction is the value of the whole land. *Friend* v. *Wise*, 111 U. S. 797. But where the pleadings show that there was no allegation of joint ownership or joint possession, and that the controversy with each defendant related to a separate and distinct lot of land, and the judgment is rendered separately against the defendants, then the measure of jurisdiction on appeal or writ of error is not the value of the whole land, but the value of each part separately. *Tupper* v. *Wise*, 110 U. S. 398, where it was said: "The rule is well settled that distinct judgments in favor of or against distinct parties, though in the same record, cannot be joined to give this court jurisdiction."

We think that the case at bar falls within the rule of *Tupper* v. *Wise*. It appears in point of fact that the value of the whole land, which the plaintiff sought to recover in separate parcels from the eighty-four defendants exceeds $25,000. But it also appears that the value of the land in controversy with any one of the defendants is far less than $25,000.

Stopping at this point, it would follow that the writ of error should be dismissed. But the form of the judgment in this case is peculiar and must receive consideration before the motion to dismiss is finally disposed of. The judgment of the Supreme Court of the Philippine Islands simply affirmed the judgment of the Court of First Instance. In that court, as there was no formal judgment, the terms of it must be gathered from the opinion of the Judge. The opinion concludes as follows:

"I decide; First, that the Compañia General de Tabacos de Filipinas shall be restored by the sheriff or by any of his deputies, to the possession of the hacienda San Luis y la Concepcion by giving possession thereof to D. Miguel Macias y Toro, or any other person lawfully representing the said com-

pany. . . . Third, that both the present defendants as well as those declared in default, be required to immediately vacate the said hacienda or be evicted therefrom, together with their houses and warehouses. Fourth, that the preliminary injunction issued on the 15th of November last, and modified on the third inst., be regarded as perpetual from this date, and the injunction bond of $10,000 given is to be cancelled after the proper legal formalities. The tobacco in the hands of the receiver will be delivered to the Compañia General, and the bond given by the receiver cancelled, after rendition by him of the accounts of his receivership. Fifth, and last, that the defendants present, and those in default, pay the costs and damages in the sum of nine thousand Mexican pesos; and finally, that the said defendants are enjoined absolutely from performing any act hereafter tending in the slightest degree to disturb the possession by the Compañia General of the lands comprised within the hacienda of San Luis y la Concepcion. So ordered."

If this language is to be taken as expressing the judgment of the court, it certainly has some tendency to show that the judgment for the restoration of the lands was a joint one against all the defendants. But we are not inclined to scrutinize too strictly the language of a learned Judge trained in another system of jurisprudence than our own, and in view of the separate issues clearly made by the pleadings and the prayer of the complaint that the plaintiff be restored "to the possession of the various parcels of the said estate above indicated, after the eviction or expulsion therefrom of all the defendants, including the houses and warehouses which they have erected thereon," we construe this judgment to run separately against each defendant for that part of the land of which he was alleged and found to be in possession. It was so treated by the Judge of the Supreme Court of the Philippine Islands, in refusing to allow a writ of error. The judgment for damages appears to be, so far as we can see, a joint judgment against all the defendants. But even the whole amount

of the damages, 9,000 Mexican pesos, added to the value of the land in controversy with any of the defendants, does not make a sum exceeding $25,000. We think, therefore, that the writ of error must be dismissed.

It may not be improper to say that if we had jurisdiction on this writ of error we should find grave difficulty in sustaining the joint judgment for damages against all the defendants, if, indeed, we have properly construed it to be joint. But we have no such jurisdiction, and therefore refrain from deciding that point. Doubtless, if there is anything in it, some way may be found, by application to the Supreme Court of the Philippine Islands, to correct the error, if any exists.

Writ of error dismissed.